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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

01-31627

In re

WASHINGTON GROUP
INTERNATIONAL, INC., et al.,

Debtors.

Case No. BK-N-
(Chapter 11)

INTERIM ORDER AUTHORIZING
DEBTORS IN POSSESSION TO
ENTER INTO POSTPETITION
FINANCING PURSUANT TO
SECTIONS 363 AND 364 OF
THE BANKRUPTCY CODE, AND
GRANTING LIENS, SECURITY
INTERESTS AND SUPERPRIORITY
CLAIMS

Hearing Date: May 14, 2001
Hearing Time: 1:00 p.m.

Upon the motion (the "Motion") dated May 13, 2001, of
Washington Group International ("WGI"), and each of the above

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captioned debtors and debtors in possession (each individually a "Debtor" and, collectively the "Debtors"), (a) for the entry of an Order authorizing the Debtors to (i) obtain postpetition financing pursuant to sections 363 and 364 of title 11 of the United States Code (the "Bankruptcy Code") by entering into that certain Secured Super-Priority Debtor in Possession Revolving Credit Facility, dated as of May 14, 2001 (as the same may be amended, supplemented or otherwise modified from time to time (the "Postpetition Credit Agreement"),¹ with the Lenders and Credit Suisse First Boston ("CSFB"), as Administrative Agent and Collateral Agent (the "Postpetition Agent") (collectively, with the "Lenders" the "Postpetition Lenders"), and certain other guarantors from time to time party thereto, subject to the terms and conditions set forth herein and therein, (ii) grant mortgages, security interests, liens and superpriority claims to the Postpetition Agent acting on behalf of, and for the benefit of, itself, and the Postpetition Lenders (including a priority pursuant to section 364(c)(1) of the Bankruptcy Code, liens pursuant to sections 364(c)(2) and (3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code, in all of the Debtors' presently owned or hereafter acquired property to secure the Debtors' obligations under the Postpetition Financing Documents (as defined below)), and (iii)

¹ Unless otherwise defined herein, all capitalized terms used herein have the meanings ascribed to such terms in the Postpetition Credit Agreement.

to grant the Lenders, pursuant to Bankruptcy Code § 364(c)(1), priority in payment with respect to such obligations over any and all administrative expenses of the kinds specified in Bankruptcy Code §§ 503(b) and 507(b), other than in respect of the Carveout (as defined below), (b) seeking this Court's authorization, pursuant to Bankruptcy Code § 363(c), to use the Cash Collateral (as defined below) and, pursuant to Bankruptcy Code §§ 361, 363(e) and 364(d), to provide adequate protection to the Prepetition Secured Lenders (as defined below) with respect to any diminution in the value of the Prepetition Lenders' interests in the Prepetition Collateral (as defined below) resulting from the priming liens and security interests to be granted herein pursuant to Bankruptcy Code § 364(d) to secure the Postpetition Financing, the use of Cash Collateral, the use, sale or lease of the Prepetition Collateral (other than the Cash Collateral) and the imposition of the automatic stay pursuant to Bankruptcy Code § 362(a), which adequate protection is set forth in a separate "Stipulation and Order Authorizing and Restricting Use of Cash Collateral and Granting Adequate Protection Pursuant To Sections 361, 363, 364, 506, and 552 of the Bankruptcy Code", dated May 14, 2001 (the "Adequate Protection Stipulation & Order"), (c) pending a final hearing on the Motion (the "Final Hearing"), obtain emergency postpetition loans under the Postpetition Credit Agreement to and including the date on which the Final Order (as defined below) is entered (the "Interim Facility"), and (d) in accordance with Rule 4001(c)(2) of the Federal Rules of

Bankruptcy Procedure, requesting that this Court schedule the Final Hearing and approve notice with respect thereto, and the Court having considered the Motion and the Exhibits attached thereto, including, without limitation, the Postpetition Credit Agreement; and in accordance with Bankruptcy Rule 4001(c)(2) and (c)(3), due and proper notice of the Motion having been given under the circumstances; and a hearing to consider approval of the Interim Facility having been held and concluded on the date hereof (the "Interim Hearing"), and upon all of the pleadings filed with the Court and all of the proceedings held before the Court; and after due deliberation and consideration and good and sufficient cause appearing therefor,
THE COURT HEREBY FINDS:

A. On May 14, 2001 (the "Petition Date"), the Debtors each filed with this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has been appointed in the Debtors' chapter 11 cases.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief sought herein are sections 105, 361, 362, 363 and 364

of the Bankruptcy Code and Bankruptcy Rule 4001(b) and (c). Venue of the Debtors' chapter 11 cases and the relief set forth herein in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The Prepetition Secured Lenders (defined below) assert, and the Debtors admit, that pursuant to that certain Credit Agreement, dated as of July 7, 2000, as amended, by and among, WGI, as borrower, Credit Suisse First Boston, as Administrative and Collateral Agent, Bank of Montreal, as Syndication Agent, Bank of America, N.A. and U.S. Bank National Association, as Documentation Agents (collectively, the "Prepetition Agents") and the lenders from time to time party thereto (the "Prepetition Secured Lenders" and each, individually, a "Prepetition Secured Lender"), among other parties, (as amended from time to time, the "Prepetition Credit Agreement", and together with all agreements, documents, notes, instruments and any other agreements delivered pursuant thereto or in connection therewith, the "Prepetition Financing Documents"), the Prepetition Secured Lenders made loans and advances to, issued letters of credit for and/or provided other financial accommodations (collectively, the "Prepetition Indebtedness") to the Debtors to, inter alia, finance the acquisition of certain subsidiaries of Raytheon Engineers and Constructors International, Inc. The Prepetition Secured Lender assert, and the Debtors admit, that WGI's principal wholly-owned domestic subsidiaries (the "Prepetition Loan Guarantors") jointly

and severally unconditionally guaranteed all obligations under the Prepetition Financing Documents.² The Debtors admit that as of the Petition Date the aggregate amount of approximately \$703,000,000 was outstanding in respect of loans and letters of credit (together with accrued and unpaid interest thereon) made by the Prepetition Secured Lenders pursuant to the Prepetition Credit Agreement, plus interest thereon and fees and expenses incurred in connection therewith as provided in the Prepetition Financing Documents. For purposes of this Order, each of the terms Postpetition Indebtedness (as defined below), and Prepetition Indebtedness shall include the principal of, and all interest, fees and other charges owing in respect of, such loans or indebtedness (including any reasonable attorneys', accountants' and financial advisors' fees that are chargeable or reimbursable under the relevant agreement relating to such loans or other indebtedness).

D. The Debtors admit that to secure the Prepetition Indebtedness, WGI, and the other Prepetition Loan Guarantors from time to time, granted to the Collateral Agent (as defined in the Prepetition Credit Agreement), on behalf of and for the benefit of the Prepetition Agents and the Prepetition Secured Lenders, pursuant to various security agreements, pledge agreements and other agreements, pledges, liens and security interests

² Foreign entities, non-wholly owned subsidiaries, joint ventures and certain wholly-owned domestic subsidiaries whose asset value was determined to be de minimis, are not Prepetition Loan Guarantors.

(collectively, "Liens") in substantially³ all of the value of

³ The Prepetition Liens granted under the Prepetition Financing Documents were subject to certain exceptions, which are as follows:

(a) The Security Agreement stated: "provided that, to the extent that the grant by any Grantor of a security interest pursuant to this Agreement in its right, title, and interest in (i) any asset of such Grantor would violate any applicable law or, in the good faith judgment of the Administrative Agent, in consultation with the Borrower, the expense, tax or regulatory consequences or difficulty of obtaining such security interest would not, in light of the benefits to accrue to the Lenders, justify such grant or (ii) any contracts or any General Intangibles or Copyright Licenses, Patent Licenses or Trademark Licenses arising under such contracts is prohibited by such contracts without the consent of any other party thereto or would give any other party to such contracts the right to terminate its obligations thereunder or is permitted with consent if all necessary consents to such grant of a security interest have not been obtained from other parties thereto (it being understood that the foregoing shall not obligate such Grantor to obtain such consents), then, in the case of either clause (i) or clause (ii), a security interest in such right, title and interest shall not be granted pursuant to this Agreement; provided further that the limitation in the proceeding clause (ii) shall not affect, limit, restrict or impair the grant by such Grantor of a security interest pursuant to this Agreement in any Account or any money or other amounts due or to become due under any contracts."

(b) The Pledge Agreement provided that: "Pledge Equity Interests and Rights shall not include (i) Equity Interests in any inactive Subsidiary that does not own any significant assets, (ii) any Equity Interests or Rights in any Person, not wholly owned (directly or indirectly) by the Borrower, the pledge of which is prohibited by any applicable joint venture agreement, equityholders' agreement or the like entered into with another Person holding any Equity Interests or Rights in such Person or by any applicable law, (iii) more than 65% of the issued and outstanding shares of voting stock of any Foreign Subsidiary if adverse tax consequences would arise from a pledge of a greater percentage of such voting stock, (iv) to the extent that applicable law requires that a Subsidiary of such Pledgor issue directors' qualifying shares, such qualifying shares and (v) any other Equity Interests or Rights if, in the good faith judgment of the Administrative Agent and evidenced in writing, in

their personal property, assets, causes of action, and rights wherever located, then owned or thereafter acquired or arising, and the proceeds, products, rents and profits of all of the foregoing (all of the foregoing collateral generally described above, together with all of the proceeds, products, rents and profits thereof shall be referred to herein collectively as the "Prepetition Collateral" and such Liens shall be referred to herein as the "Prepetition Liens").

E. Without prejudice to the rights of any other party, the Debtors acknowledge and agree that substantially all of the Prepetition Liens constitute valid, binding, enforceable (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code) and perfected first priority Liens subject only to prior Liens described in or otherwise permitted by the Prepetition Credit Agreement, and are not subject to avoidance or subordination (except insofar as such Liens are subordinated to the Postpetition Liens, the Adequate Protection Liens (each as defined below) and the Carveout in accordance with the provisions of this Order) pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Debtors acknowledge and agree that the Prepetition Indebtedness and the guarantees thereof (the "Guarantees" constitute legal, valid and

consultation with the Borrower, the expense, tax or regulatory consequences or difficulty of obtaining a security interest in such Equity Interests or Rights would not, in light of the benefits to accrue to the Lenders, justify taking such action."

binding obligations of WGI and the Prepetition Loan Guarantors, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), no offsets, defenses or counterclaims to the Prepetition Indebtedness or Guarantees exists, and no portion of the Prepetition Indebtedness or Guarantees is subject to avoidance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

F. An immediate and critical need exists for the Debtors to obtain funds in order to continue the operation of their businesses. Without such funds, the Debtors will not be able to pay their payroll and other direct operating expenses, perform under valuable contracts and obtain goods and services needed to carry on their businesses during this sensitive period in a manner that will avoid irreparable harm to the Debtors' estates. At this time, the ability of the Debtors to finance their operations and the availability to them of sufficient working capital and liquidity through the incurrence of new indebtedness for borrowed money and other financial accommodations are vital to the confidence of the Debtors' vendors and suppliers of other goods and services, to project owners, to their customers and employees and to the preservation and maintenance of the going concern value of the Debtors' estates. The Debtors are unable to obtain the required funds in the form of unsecured credit or unsecured debt allowable under section 503(b)(1) of the Bankruptcy Code as an administrative

expense pursuant to section 364(a) or (b) of the Bankruptcy Code, unsecured debt having the priority afforded by section 364(c)(1) of the Bankruptcy Code or debt secured only as described in section 364(c)(2) or (3) of the Bankruptcy Code.

G. The Prepetition Secured Lenders have not objected to (i) the priming of the Prepetition Liens pursuant to this Order and the other Postpetition Financing Documents (as defined below), based on the terms of this Order and the Adequate Protection Stipulation & Order and (ii) the use by the Debtors of the Prepetition Collateral, including the Cash Collateral (as defined in the Adequate Protection Stipulation & Order), based on the terms of the Adequate Protection Stipulation & Order.

H. Based upon the foregoing, the Postpetition Agent and Postpetition Lenders are willing to provide the additional financing contemplated herein, all subject to the terms and conditions set forth herein and in the other Postpetition Financing Documents and the provisions of this Order assuring that the Postpetition Liens and the various claims, super-priority claims and other protections granted pursuant to this Order and the other Postpetition Financing Documents will not be affected by any subsequent reversal or modification of this Order or any other order, as provided in section 364(e) of the Bankruptcy Code, which is applicable to the postpetition financing arrangements contemplated by this Order. The Postpetition Agent and each of the Postpetition Lenders has acted in good faith in consenting to and in agreeing to provide the

postpetition financing contemplated by this Order and the other Postpetition Financing Documents and the reliance of the Postpetition Agent and each of the Postpetition Lenders on the assurances referred to above is in good faith.

I. Notice of the Interim Hearing on the Motion and this Order has been provided (by hand or telecopy) to counsel to the Prepetition Secured Lenders, the United States Trustee, and the holders of the twenty largest unsecured claims against the Debtors. In view of the urgency of the relief requested, such notice constitutes sufficient and adequate notice under Bankruptcy Rule 4001 and no other notice need be given.

J. Good cause has been shown for the entry of this Order. Among other things, entry of this Order will minimize disruption of the Debtors' businesses and operations and permit them to meet payroll and other operating expenses, continue projects, obtain needed supplies and retain customer and supplier confidence by demonstrating an ability to maintain normal operations. The financing arrangements authorized hereunder are vital to avoid immediate and irreparable harm to the Debtors' estates. Consummation of such financing arrangements therefore are in the best interest of the Debtors' estates.

K. The financing arrangements authorized hereunder have been negotiated in good faith and at arm's length among the Debtors, the Postpetition Agent and each of the Postpetition Lenders, and the terms of such financing arrangements are fair and reasonable under the circumstances, reflect the Debtors'

exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration.

L. The Debtors have requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). The permission granted herein to enter into the Postpetition Financing Documents and obtain funds, incur indebtedness and other financial accommodations, including the Debtors' joint and several unconditional guarantee of the indebtedness, thereunder is necessary to avoid immediate and irreparable harm to the Debtors. This Court concludes that entry of this Order is in the best interests of the Debtors and their estates and creditors as its implementation will, among other things, allow for the continued operation and rehabilitation of the Debtors' existing businesses.

M. Based upon the foregoing findings and conclusions and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor;

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Motion is granted, subject to the terms and conditions set forth in this Order and the Adequate Protection Stipulation & Order.

2. The Debtors be, and hereby are, authorized to enter into the Postpetition Credit Agreement (the Postpetition Credit Agreement, together with all agreements, documents, notes and instruments delivered pursuant hereto or thereto or in

connection herewith or therewith, including the Interim Budget and the Final Budget (collectively, the "Budget"), this Order and the Final Order (as defined below), are hereinafter referred to as the "Postpetition Financing Documents") in substantially the form annexed hereto as Exhibit "A," and to borrow money, incur indebtedness and perform their obligations hereunder and thereunder in accordance with, and subject to, the terms of this Order and the other Postpetition Financing Documents. The Debtors are authorized to enter into such modifications and amendments to the Postpetition Financing Documents (including, without limitation, the Budget), without further order of this Court, as may be agreed upon in writing by the Debtors, ^{and as amended by the Court} the Postpetition Agent and the Postpetition Lenders, as required under the terms of the Postpetition Financing Documents, except for (i) any increase in the Total Commitments, other than as contemplated in section 2.1(b) of the Postpetition Credit Agreement, (ii) any increase in the applicable interest rates on the Loans, (iii) any modification of the maturity of the Loans or (iv) any other modification which imposes any additional material burden on the Debtors. Upon execution and delivery of the Postpetition Financing Documents, the Postpetition Financing Documents shall constitute valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with their terms; provided, however, that notwithstanding any other provisions of this Order or of the other Postpetition Financing Documents, the Debtors shall not prior to entry of a final order

(the "Final Order") approving the Postpetition Financing Documents incur more than ^{150 million} ~~\$120~~ Million in Postpetition Indebtedness (the "Interim Financing"). The Interim Financing is necessary to avoid immediate and irreparable harm to the Debtors' estates.

3. As security for all loans, advances, letters of credit any other indebtedness or obligations, contingent or absolute which may now or from time to time hereafter be owing by the Debtors to the Postpetition Agent or the Postpetition Lenders or Prepetition Secured Lenders hereunder or under any of the other Postpetition Financing Documents (all such loans, advances letters of credit and other indebtedness or obligations, together with any obligations at any time incurred by the Debtors on or after the Petition Date to any of the Postpetition Agents, any of the Postpetition Lenders or any of the Prepetition Secured Lenders in connection with the Debtors' cash management system, collectively, the Postpetition Indebtedness"), the Postpetition Agent is hereby granted for the sole benefit of itself and the Postpetition Lenders valid, binding, enforceable and perfected Liens (the "Postpetition Liens") in all currently owned or hereafter acquired property, assets, causes of action, and rights of the Debtors of any kind or nature, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising and all proceeds, products, rents and profits thereof, including, without limitation, all cash (including all Cash Collateral, wherever held), goods, accounts receivable,

inventory, cash-in-advance deposits, real estate, machinery, equipment, vehicles, trademarks, trade names, licenses, causes of action, rights to payment including tax refund claims, insurance proceeds and tort claims (including actions for preferences, fraudulent conveyances, and other avoidance power claims and any recoveries under sections 506(c), 542, 544, 545, 547, 548, 549, 550, 552(b) and 553 of the Bankruptcy Code) (subject to exceptions explicitly set forth in the Postpetition Financing Documents which include liens on the Debtors' equity or partnership interests in non-debtor limited liability companies or joint ventures where such liens are prohibited or result in rights of the third party partners or owners to terminate such agreements) and the proceeds, products, rents and profits of all the foregoing (all of the foregoing, the "Postpetition Collateral"):

a. pursuant to Bankruptcy Code § 364(c)(2), a first priority, perfected Lien upon all of the Debtors' right, title and interest in, to and under all Collateral that is not otherwise encumbered by a validly perfected security interest or lien on the Filing Date;

b. pursuant to Bankruptcy Code § 364(c)(3), a second priority, junior, perfected Lien upon all of the Debtors' right, title and interest in, to and under all other Collateral which is subject to a validly perfected security interest or lien in existence as of the Filing Date, or a valid lien perfected (but not granted) after the Filing Date to the extent such perfection in respect of a pre-Filing Date claim is expressly permitted under the Bankruptcy Code and

c. pursuant to Bankruptcy Code § 364(d)(1), a first priority, senior, priming, perfected Lien upon all of the Debtors' right, title and interest in, to and under the Prepetition Collateral (but subject to the liens of other third parties set forth in subsection 3(a) above).

4. Except as expressly set forth in this Order, the Liens granted in this Order shall not be (i) subject to any Lien which is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or (ii) subordinated to or made pari passu with any other Lien under section 364(d) of the Bankruptcy Code or otherwise.

5. Any provision of this Order or the Postpetition Credit Agreement to the contrary notwithstanding, the Liens and Superpriority claims granted to the Postpetition Agent for the benefit of itself and the Postpetition Lenders pursuant to the Postpetition Credit Agreement and this Order shall be subject and subordinate to a carveout (the "Carveout") for (i) the unpaid fees of the Clerk of the Bankruptcy Court and of the United States Trustee pursuant to 28 U.S.C. § 1930(a) and (b), (ii) the aggregate allowed unpaid fees and expenses payable under sections 330 and 331 of the Bankruptcy Code to professional persons retained pursuant to an order of the Court by the Debtors or any statutory committee appointed in these chapter 11 cases (collectively, the "Professional Fees") (other than the fees and expenses, if any, of any such professional persons incurred, directly or indirectly, in respect of, arising from or relating to, the initiation or prosecution of any action for preferences, fraudulent conveyances, other avoidance power claims or any other claims or causes of action against the Postpetition Agent or the

Postpetition Lenders or with respect to the Postpetition Indebtedness or against the Prepetition Agents or the Prepetition Secured Lenders or with respect to the Prepetition Indebtedness) after the occurrence of any Event of Default, in an amount not to exceed \$2,000,000 in the aggregate, and (iii) Professional Fees incurred and unpaid prior to the occurrence of any Default or Event of Default. So long as no Event of Default shall have occurred and be continuing, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable, and the same shall not reduce the Carveout.

6. In addition, the Postpetition Indebtedness shall have priority in all of these chapter 11 cases in accordance with the provisions of sections 364(c)(1) of the Bankruptcy Code over all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code ("Superpriority"), subject only to the Carveout.

7. From and after the Effective Date, the proceeds of the Postpetition Indebtedness, the issuance of the Letters of Credit, the Prepetition Collateral and the Postpetition Collateral shall not, directly or indirectly, be used to pay expenses of the Debtors or otherwise disbursed except for (i) those expenses and/or disbursements that are expressly permitted under the Postpetition Financing Documents, (ii) compensation and reimbursement of expenses allowed by this Court to attorneys,

accountants, investment bankers, financial advisors, consultants or other professional persons retained by the Debtors or any official committees that may be appointed in these chapter 11 cases, (iii) amounts due to the Postpetition Agent and/or the Postpetition Lenders and their accountants, attorneys, financial advisors, consultants or other professionals hereunder or under the other Postpetition Financing Documents, and (iv) amounts due to the Prepetition Secured Lenders pursuant to the Adequate Protection Stipulation & Order; provided that the foregoing shall not be construed as consent to the allowance of any of the amounts referred to in the preceding clause (ii) and shall not affect the right of the Postpetition Agent or the Postpetition Lenders to object to the allowance and payment of such amounts. No administrative claims, including fees and expenses of professionals, shall be assessed against or attributed to the Postpetition Agent, any of the Postpetition Lenders, any of the Prepetition Agents or any of the Prepetition Secured Lenders with respect to their interests in the Postpetition Collateral pursuant to the provisions of section 506(c) of the Bankruptcy Code or otherwise by, through or on behalf of the Debtors, without the prior written consent of the Postpetition Agent and the Postpetition Lenders, and no such consent shall be implied from any action, inaction or acquiescence by the Postpetition Agent or the Postpetition Lenders or otherwise. No consent by any of the Prepetition Agents or any of the Prepetition Secured Lenders to any administrative claims, including fees and expense

of professionals, sought to be assessed against or attributed to any of the Prepetition Agents or any of the Prepetition Secured Lenders with respect to their interests in the Prepetition Collateral pursuant to the provisions of section 506(c) of the Bankruptcy Code or otherwise by, through or on behalf of the Debtors, shall be implied from any action, inaction or acquiescence by the Postpetition Agent or the Postpetition Lenders or otherwise. Except as set forth in the first sentence of this Paragraph 7, neither the Postpetition Lenders nor the Postpetition Agent have consented or agreed to the use of the proceeds of the Postpetition Indebtedness, the Prepetition Collateral or the Postpetition Collateral.

8. The automatic stay extant under section 362(a) of the Bankruptcy Code shall be, and it hereby is, modified to the extent necessary to permit the Agent for the sole benefit of the Postpetition Lenders to receive, collect and apply payments and proceeds in respect of the Prepetition Collateral and the Postpetition Collateral in accordance with the terms and provisions of this Order, the other Postpetition Financing Documents and the Prepetition Financing Documents.

9. Notwithstanding anything herein or in the other Postpetition Financing Documents, the Debtors shall no longer, pursuant to this Order, the other Postpetition Financing Documents, or otherwise, be authorized to borrow funds or incur indebtedness hereunder or under the other Postpetition Financing Documents or to use any proceeds of the Postpetition Indebtedness

already received (and any obligations of the Postpetition Lenders to make loans or advances or issue Letters of Credit hereunder or under the other Postpetition Financing Documents shall be terminated) upon the earliest to occur of any of the following events (any such event shall be referred to as a "Termination Event" and the date of any such event shall be referred to as the "Termination Date"):

a. material non-compliance by any of the Debtors with any of the terms or provisions of this Order;

b. any Event of Default shall have occurred and be continuing, and any notice required pursuant to the Postpetition Financing Documents to cause the Postpetition Indebtedness to become due and payable shall have been given; and

by facsimile
c. the Termination Date (as defined in the Postpetition Credit Agreement).

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10. Notwithstanding the occurrence of the Termination Date or anything herein, all of the rights, remedies, benefits and protections provided to the Postpetition Agent and the Postpetition Lenders under this Order shall survive the Termination Date. Upon the Termination Date, the principal of and all accrued interest and fees and all other amounts owed to the Postpetition Agent or the Postpetition Lenders hereunder or under the other Postpetition Financing Documents shall be immediately due and payable and the Agent and the Postpetition Lenders shall have all other rights and remedies provided in the Postpetition Financing Documents.

11. Notwithstanding anything herein or in the Adequate Protection Stipulation & Order to the contrary, no Postpetition

Indebtedness or any proceeds of Prepetition Collateral or Postpetition Collateral or Letters of Credit (collectively, "Lender Funds") may be used by any of the Debtors, any statutory committee or any other person or entity to object to or contest in any manner, or raise any defenses to, the validity, perfection, priority or enforceability of the Prepetition Indebtedness or the Prepetition Liens, or to assert or prosecute any action for preferences, fraudulent conveyances, other avoidance power claims or any other claims or causes of action against any of the Prepetition Secured Lenders or any of the Prepetition Agents; without limitation of the foregoing (i) at no time shall any such committee or other person or entity have the right to use Lender Funds to prosecute any such claims, causes of action, objections, contests or defenses (collectively, "Claims and Defenses"), (ii) any such committee or other person or entity shall have the right to assert Claims and Defenses only in an action commenced in this Court on or before the 90th day following the Petition Date, (iii) if no such action is commenced on or before such date, all Claims and Defenses shall be deemed, immediately and without further action by the Prepetition Agent or the Prepetition Lenders, to have been forever relinquished and waived as to such committee and other person or entity, and (iv) if such an action is commenced on or before such date, all Claims and Defenses shall be deemed, immediately and without further action by the Prepetition Agent or the Prepetition Lenders, to have been forever relinquished and waived as to such committee

and other person or entity, except with respect to Claims and Defenses that are expressly asserted in such action; provided, further, that as to the Debtors (but not binding on any other party), all such Claims and Defenses are hereby relinquished and waived as of the Effective Date. In addition to the foregoing, no Lender Funds may be used by any of the Debtors, any statutory committee or any other entity to object to or contest in any manner the Postpetition Indebtedness or the Postpetition Liens or to assert or prosecute any actions, claims or causes of action against the Postpetition Agent or any of the Postpetition Lenders.

12. As long as any portion of the Obligations remains unpaid, or the Postpetition Credit Agreement, the Notes and all Postpetition Financing Documents remain in effect, the Debtors shall not seek, and it shall constitute an Event of Default (and automatic occurrence of the Termination Date) if any of the Debtors seek, or if there is entered, an order dismissing any of the Chapter 11 cases. If an order dismissing any of the chapter 11 cases under Bankruptcy Code § 1112 or otherwise is at any time entered, such order shall provide (in accordance with Bankruptcy Code §§ 105 and 349) that (a) the Superpriority claims, Postpetition Liens granted pursuant to this Order to the Postpetition Agent and the Postpetition Lenders and to the Prepetition Agent and the Prepetition Lenders, as the case may be, shall continue in full force and effect, shall remain binding on all parties in interest notwithstanding such dismissal and

shall have been paid and satisfied in full, (b) this Court shall retain jurisdiction to the extent it has the authority to do so, notwithstanding such dismissal, for the purposes of enforcing such Superpriority claims and Postpetition Liens, and (c) if such dismissal occurs prior to the expiration of the ninety (90) day period granted to any statutory committee of unsecured creditors pursuant to decretal paragraph 11 of this Order, such committee's right to bring actions described in decretal paragraph 11 of this Order shall survive until the expiration of the last day of the period specified in paragraph 11 notwithstanding the entry of such dismissal order.

13. Upon the occurrence and during the continuance of an Event of Default, the Postpetition Agent, acting at the direction of the required Postpetition Lenders, may exercise rights and remedies and take all or any of the following actions without further modification of the automatic stay pursuant to Bankruptcy Code § 362 (which is hereby deemed modified and vacated to the extent necessary to permit such exercise of rights and remedies and the taking of such actions) or further order of or application to this Court: (a) terminate the Commitments to the Debtors; (b) declare the principal of and accrued interest, fees and other liabilities constituting the Obligations to be due and payable; (c) setoff amounts in the Cash Collateral Account (each as defined in the Postpetition Credit Agreement) or any other accounts maintained with a Postpetition Lender, or otherwise enforce rights against any other Collateral in the

possession of the Postpetition Agent or any Postpetition Lender; and/or (d) take any other action or exercise any other right or remedy permitted to the Postpetition Agent or the Postpetition Lenders under the Loan Documents, this Order or by operation of law; provided, however, the Postpetition Agent and the Postpetition Lenders may take the actions described in clauses (c) or (d) above only after providing five (5) business days' prior written notice to the Company, the United States Trustee and any statutory committee(s) appointed in these chapter 11 cases. The Debtors waive any right to seek relief under the Bankruptcy Code, including without limitation, under Bankruptcy Code § 105, to the extent any such relief would in any way restrict or impair the rights and remedies of the Postpetition Agent and the Postpetition Lenders set forth in this Order and in the Loan Documents, provided that such waiver shall not preclude the Debtors from contesting whether a Default or Event of Default has occurred and is then continuing.

14. Except as provided in the Postpetition Financing Documents, the Debtors shall be enjoined and prohibited from at any time during their chapter 11 cases granting Liens in the Prepetition Collateral, the Postpetition Collateral or any portion thereof to any other parties pursuant to section 364(c) or (d) of the Bankruptcy Code or otherwise, which Liens are senior, on a parity with or junior to the Liens of the Postpetition Agent or the Postpetition Lenders therein unless and until the Postpetition Indebtedness is indefeasibly paid in full

15. The Debtors shall execute and deliver to the Postpetition Agent and the Postpetition Lenders all such agreements, financing statements, instruments and other documents as the Postpetition Agent or any of the Postpetition Lenders may reasonably request to evidence, confirm, validate or perfect the Liens granted pursuant hereto.

16. The Debtors shall promptly (a) reimburse the Postpetition Agent and the Postpetition Lenders for their costs and expenses provided for in Section 12.3 of the Postpetition Credit Agreement, as the case may be. None of such costs and expenses shall be subject to the approval of this Court, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court, ~~except that the Postpetition Lenders shall file monthly notices pursuant~~ ^{to §102 regarding payment of attorneys' fees.} All Liens granted herein and in the other Postpetition Financing Documents to secure repayment of the Postpetition Indebtedness, shall pursuant to this Order be, and they hereby are, deemed perfected effective as of the Effective Date, and no further notice, filing or other act shall be required to effect such perfection; provided, however, if the Postpetition Agent shall, in its sole discretion, choose to file such mortgages, financing statements, notices of liens and security interests and other similar documents, all such mortgages, financing statements or similar instruments shall be deemed to have been filed or recorded at the time and on the date of entry of this Order.

17. The provisions of this Order shall be binding upon and inure to the benefit of each of the Postpetition Agent and

each of the Postpetition Lenders and the Debtors and their respective successors and assigns (including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors).

18. For purposes of this Order, the "Effective Date" shall be the Petition Date.

19. Based on the findings set forth in this Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the postpetition financing arrangements contemplated by this Order, in the event any or all of the provisions of this Order or any other Postpetition Financing Documents are hereafter modified, amended or vacated by a subsequent order of this or any other Court, no such modification, amendment or vacation shall not affect the validity, enforceability or priority of any Lien or claim authorized or created hereby or thereby. Notwithstanding any such modification, amendment or vacation, any claim granted to the Postpetition Agent or the Postpetition Lenders hereunder or under the other Postpetition Financing Documents arising prior to the effective date of such modification, amendment or vacation shall be governed in all respects by the original provisions of this Order and the other Postpetition Financing Documents, and the Postpetition Agent and the Postpetition Lenders, as the case may be, shall be entitled to all of the rights, remedies, privileges and benefits, including the Liens and priorities

granted herein and therein, with respect to any such claim.

20. The Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution of additional security agreements, mortgages and financing statements) and to pay fees and expenses which may be required or necessary for the Debtors' performance under the Postpetition Financing Documents, including, without limitation: (i) the execution of the Postpetition Financing Documents, and (ii) the payment of the fees and other expenses described in the Postpetition Financing Documents as such become due, including, without limitation, agent fees, commitment fees, letter of credit fees and facility fees and reasonable attorneys', financial advisers', consultants' and accountants' fees and disbursements as provided for in the Postpetition Financing Documents.

21. The obligations of the Debtors in respect of the Postpetition Indebtedness, including the Loans and all obligations in respect of the Letters of Credit shall not be discharged by the entry of an order confirming a plan of reorganization in any of the Debtors' chapter 11 cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors hereby waive such discharge.

22. The Debtors shall, on or before May 10, 2001, serve by United States mail, first-class postage prepaid, copies of the Motion, this Order and a notice of the hearing (the "Final Hearing Notice") to be held on ^{JUNE 13} ~~May~~, 2001 at 9:30 a.m. to

consider entry of the proposed Final Order on: (a) the entities set forth on the list of the twenty largest unsecured creditors of the Debtors; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the District of Nevada; (d) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Harvey R. Miller, Esq. and Marcia L. Goldstein, Esq., counsel to the Prepetition Secured Lenders, and (e) Belding, Harris & Petroni, Ltd., 417 West Plumb Lane, Reno, Nevada 89509, Attn: Stephen R. Harris, Esq., co-counsel to the Prepetition Secured Lenders. Copies of the Motion, this Order and the Final Hearing Notice shall be served upon all persons requesting service of papers pursuant to Bankruptcy Rule 2002 by United States mail, first-class postage prepaid, within one (1) business day following the receipt of such request. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the United States Bankruptcy Court Clerk for the District of Nevada no later than 4:30 p.m. on May 30, 2001, which objections shall be served so that the same are received on or before such date and time by: (a) Skadden, Arps, Slate, Meagher & Flom, 333 West Wacker Drive, Chicago, Illinois 60606, Attn: David S. Kurtz, Esq. and Timothy R. Pohl, Esq., counsel to the Debtors, (b) Lionel Sawyer & Collins, 1100 Bank of America Plaza, 50 W. Liberty St., Reno, Nevada 89501, Attn: Jennifer A. Smith, Esq., co-counsel to the Debtors, (c) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Harvey R. Miller,

Esq. and Marcia L. Goldstein, Esq., counsel to the Prepetition Secured Lenders, (d) Belding, Harris & Petroni, Ltd., 417 West Plumb Lane, Reno, Nevada 89509, Attn: Stephen R. Harris, Esq., co-counsel to the Prepetition Secured Lenders, and (e) the Office of the United States Trustee. Such notice shall constitute adequate and sufficient notice.

23. Notwithstanding anything herein, the entry of this Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, (x) any of the rights of the Postpetition Agent or the Postpetition Lenders under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right of the Postpetition Agent or the Postpetition Lenders to (i) request additional adequate protection of their interests in the Prepetition Collateral or the Postpetition Collateral or relief from or modification of the automatic stay extant under section 362 of the Bankruptcy Code, (ii) request conversion of any of the Debtors' chapter 11 cases to cases under chapter 7 of the Bankruptcy Code, and (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans or (y) any of the rights, claims or privileges (whether legal, equitable or otherwise) of the Postpetition Agent, or the Postpetition Lenders.

24. Consistent with the terms and provisions of this Order, any moneys held by or transferred to Bank of America shall constitute Postpetition Collateral and shall be held and applied

for the benefit of the Postpetition Agent and the Postpetition Lenders in accordance with their interests and priorities as set forth in this Order.

25. Any Affiliate of the Debtors which hereafter becomes a debtor in a case under chapter 11 of the Bankruptcy Code in this Court shall automatically, immediately upon the filing of a petition for relief for such Affiliate, be deemed to be one of the "Debtors" hereunder in all respects, and all of the terms and provisions of this Order, including, without limitation, those provisions granting liens and security interests in all assets and properties of each of the Debtors and Superpriority claims in each of the Debtors' chapter 11 cases, shall immediately be applicable in all respects to such Affiliate and its chapter 11 estate.

26. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

27. Neither (x) the participation of any Prepetition Secured Lender in the Postpetition Credit Agreement, nor (y) the consent or non-objection of any Prepetition Secured Lender to (i) entry of this or any other order approving the Postpetition Credit Agreement or granting liens, security interests and/or priorities with respect thereto, or (ii) the consummation of the Postpetition Credit Agreement, nor (z) any provision of this Order, the Adequate Protection Stipulation & Order nor any relief granted hereunder shall prejudice, limit or otherwise affect the rights, remedies or causes of action available (directly or indirectly), if any, to any Prepetition Secured Lender against any other Prepetition Lender arising under or in connection with or related to any Prepetition Financing Documents.

Dated: May 4, 2001
Reno, Nevada



HONORABLE GREGG W. ZIVE
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

**SECURED SUPER-PRIORITY DEBTOR IN POSSESSION
REVOLVING CREDIT AGREEMENT**

Dated as of May 14, 2001

among

**Washington Group International, Inc.,
a Debtor and Debtor in Possession,
*as Borrower***

and

**The Subsidiaries of the Borrower Party Hereto as Guarantors,
as Debtors and Debtors in Possession**

and

The Lenders and Issuers from Time to Time Party Hereto

and

**Credit Suisse First Boston,
*as Administrative Agent,
Arranger and Collateral Monitoring Agent***

**Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153-0119**

Secured Super-Priority Debtor In Possession Revolving Credit Agreement dated as of May 14, 2001, among **Washington Group International, Inc.**, a Delaware corporation, as debtor and debtor in possession under Chapter 11 of the Bankruptcy Code (as defined below) (the "**Borrower**"), the Guarantors (as defined below) in their capacity as such and, for those Guarantors that are Debtor Guarantors (as defined below), as debtors in possession under Chapter 11 of the Bankruptcy Code (the "**Guarantors**"), the Lenders (as defined below), the Issuers (as defined below) and **Credit Suisse first Boston ("CSFB")**, as administrative agent for the Lenders and the Issuers (in such capacity, the "**Administrative Agent**").

W i t n e s s e t h:

Whereas, on May 14, 2001, (the "**Petition Date**"), the Borrower and the Debtor Guarantors (as defined below) each filed a voluntary petition for relief (collectively, the "**Cases**") under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Nevada (the "**Bankruptcy Court**");

Whereas, the Borrower and the Debtor Guarantors are continuing to operate their respective businesses and manage their respective properties as debtors in possession under Sections 1107 and 1108 of the Bankruptcy Code;

Whereas, the Borrower has requested that the Lenders and the Issuers provide a secured super-priority revolving credit and letter of credit facility of up to \$350,000,000 in order to fund the continued operation of the Borrower's and the Debtor Guarantors' businesses as debtors and debtors in possession under the Bankruptcy Code;

Whereas, the Lenders and the Issuers are willing to make available to the Borrower such post-petition loans and other extensions of credit upon the terms and subject to the conditions set forth herein; and

Whereas, each of the Guarantors has agreed to guaranty the obligations of the Borrower hereunder and each of the Borrower and the Guarantors has agreed to secure its obligations to the Lenders and the Issuers hereunder with, *inter alia*, security interests in, and liens on, its property and assets, whether real or personal, tangible or intangible, now existing or hereafter acquired or arising, all as more fully provided herein;

Now, Therefore, in consideration of the premises and the covenants and agreements contained herein, the parties hereto hereby agree as follows:

Definitions, Interpretation And Accounting Terms

Defined Terms

As used in this Agreement, the following terms have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"**Account**" has the meaning specified in Article 9 of the UCC.

"Indemnites" has the meaning specified in *Section 12.4 (Indemnities)*.

"Instrument" has the meaning specified in Article 9 of the UCC, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper.

"Intellectual Property" means, collectively, all rights, priorities and privileges of any Grantor relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks, Trademark Licenses and trade secrets, in each case together with all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"Interest Rate Contracts" means all interest rate swap agreements, interest rate cap agreements, interest rate collar agreements and interest rate insurance.

"Interim Budget" means the Interim DIP Budget provided by the Borrower and approved by the Administrative Agent and each Lender, for the funding of Projects and related overhead costs, consisting of a cash flow forecast for the thirteen-week period commencing on the Closing Date, showing segregated receipts and disbursements and net cash flow from operations for each Group and Division of the Borrower and its Subsidiaries and, for specified non-operational receipts and disbursements, including directly-related corporate expenses and line items reflecting Letters of Credit requirements, funding of Affiliates of the Borrower other than the Borrower and any Guarantor (including Permitted Joint Ventures) and identifying New Projects by Group and Division.

"Interim Facility Amount" means the maximum amount approved by the Bankruptcy Court in the Interim Order to be made available to the Borrower prior to the Entry Date as part of the Facility.

"Interim Order" means that certain order issued by the Bankruptcy Court in substantially the form of *Exhibit H (Form of Interim Order)*.

"Internal Revenue Code" means the Internal Revenue Code of 1986 (or any successor legislation thereto), as amended from time to time.

"Inventory" has the meaning specified in Article 9 of the UCC, wherever located.

"Investment" means, with respect to any Person, (a) any purchase or other acquisition by such Person of (i) any Security issued by, (ii) a beneficial interest in any Security issued by or (iii) any other equity ownership interest in, any other Person, (b) any purchase by such Person of all or a significant part of the assets of a business conducted by another Person, or all or substantially all of the assets constituting the business of a division, branch or other unit operation of any Person, (c) any loan, advance (other than deposits with financial institutions available for withdrawal on demand, prepaid expenses, accounts receivable and similar items made or incurred in the ordinary course of business), or capital contribution by such Person to any other Person, including all Indebtedness of any other Person to such Person arising from a sale of property by such Person other than in the ordinary course of its business and (d) any Guaranty Obligation incurred by such Person in respect of Indebtedness of any other Person.

"Investment Property" means, with respect to any Loan Party, any and all "investment property", as such term is defined in Article 9 of the UCC, of such Loan Party, wherever located.

"IRS" means the Internal Revenue Service of the United States or any successor thereto.

"Issuer" means each Lender or Affiliate of a Lender that (a) is listed on the signature pages hereof as an "Issuer" or (b) hereafter becomes an Issuer with the approval of the Administrative Agent and the Borrower by agreeing pursuant to an agreement with and in form and substance satisfactory to the Administrative Agent and the Borrower to be bound by the terms hereof applicable to Issuers.

"Leases" means, with respect to any Person, all of those leasehold estates in real property of such Person, as lessee, as such may be amended, supplemented or otherwise modified from time to time.

"Lender" means each financial institution or other entity that (a) is listed on the signature pages hereof as a "Lender" or (b) from time to time becomes a party hereto by execution of an Assignment and Acceptance or an Assumption Agreement.

"Letter of Credit" means any letter of credit issued pursuant to *Section 2.3 (Letters of Credit)*.

"Letter of Credit Obligations" means, at any time, without duplication, the aggregate of all liabilities at such time of the Loan Parties to all Issuers with respect to Letters of Credit, whether or not any such liability is contingent, and includes the sum of (a) the Reimbursement Obligations at such time and (b) the Letter of Credit Undrawn Amounts at such time.

"Letter of Credit Reimbursement Agreement" has the meaning specified in *clause (f) of Section 2.3 (Letters of Credit)*.

"Letter of Credit Request" has the meaning specified in *clause (d) of Section 2.3 (Letters of Credit)*.

"Letter of Credit Undrawn Amounts" means, at any time, the aggregate undrawn face amount of all Letters of Credit outstanding at such time.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, lien (statutory or other), security interest or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever intended to assure payment of any Indebtedness or the performance of any other obligation, including any conditional sale or other title retention agreement, the interest of a lessor under a Capital Lease, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction naming the owner of the asset to which such Lien relates as debtor.

"LLC" means each limited liability company in which a Grantor has an interest.

"LLC Agreement" means each operating agreement with respect to an LLC, as each agreement has heretofore been and may hereafter be amended, restated, supplemented or otherwise modified from time to time.

"Loan" has the meaning specified in *Section 2.1 (The Commitments)*.

"Loan Documents" means, collectively, this Agreement, the Notes (if any), each Fee Letter, the Budget, each Letter of Credit Reimbursement Agreement, each Hedging Contract entered into without any Lender after the date hereof in connection herewith, each agreement pursuant to which a Lender or an Affiliate of a Lender provides cash management services to a Loan Party in connection herewith, and each certificate, agreement or document executed by a Loan Party and delivered to the Administrative Agent or any Lender in connection with or pursuant to any of the foregoing.

"Loan Party" means the Borrower and each Guarantor.

"Material Adverse Change" means a material adverse change, other than as a result of the filing of the Cases, in any of (a) the condition (financial or otherwise), business, performance, prospects, operations or properties of the Borrower and its Subsidiaries taken as a whole, (b) the legality, validity or enforceability of any Loan Document, (c) the perfection or priority of the Liens granted pursuant to this Agreement and the Orders, (d) the ability of the Borrower to repay the Obligations or of the other Loan Parties to perform their respective obligations under the Loan Documents or (e) the rights and remedies of the Administrative Agent, the Lenders or the Issuers under the Loan Documents.

"Material Adverse Effect" means an effect that results in or causes, or could reasonably be expected to result in or cause, a Material Adverse Change.

"Material Intellectual Property" means Intellectual Property owned by or licensed to a Grantor that is material to its business.

"Material Projects" means Projects that the Administrative Agent and the Lenders shall, in their sole discretion but after consultation with the Borrower, deem to be significant enough to warrant separate reporting requirements from time to time; *provided, however*, that *"Material Projects"* shall, in any case, include Projects that (a) have an initial contract value in excess of \$35,000,000, (b) require the approval of the Executive Review Committee of the Borrower in accordance with its customary origination and approval procedures (including, without limitation, the policies and procedures described in the Executive Review Committee Charter and Schedule of Signature Authority delivered to the Administrative Agent prior to the Closing Date, as amended or otherwise modified at the reasonable request of, or otherwise with the consent of, the Administrative Agent), (c) require the issuance of any bond, letter of credit or performance or other guaranty in an amount exceeding \$1,000,000, (d) contain provision requiring the Borrower or any of its Subsidiaries to pay liquidated damages in an amount that could exceed \$1,000,000 upon the occurrence of certain events or (e) fail to contain provisions limiting the potential liability of the Borrower and its Subsidiaries to less than 50% of the initial contract value (and such initial contract value is in an amount in excess of \$1,000,000).

"Multiemployer Plan" means a multiemployer plan, as defined in subclause (3) of clause (A) of Section 4001 of ERISA, to which the Borrower, any of its Subsidiaries or any ERISA Affiliate has any obligation or liability, contingent or otherwise.

"Net Cash Proceeds" means proceeds received by any Loan Party (or any Subsidiary of any Loan Party, to the extent of the Loan Parties direct or indirect aggregate interest therein) after the Closing Date in cash or Cash Equivalents from any (a) Asset Sale, other than an Asset Sale permitted under *Section 7.4 (Sale of Assets)* (except as set forth in clauses (c), (d) and (e) thereof), net of (i) the reasonable cash costs of sale, assignment or other disposition (including the payment of any obligations with respect to Indebtedness required by an order of the Bankruptcy Court to be repaid as a result of such Asset Sale) and (ii) taxes paid or payable as a result thereof (including, for the avoidance of doubt, as a result of any distribution of such proceeds to the Loan Parties); *provided, however*, that evidence of each of (i) and (ii) above is provided to the Administrative Agent in form and substance satisfactory to it, (b) Property Loss Event net of (i) reasonable costs and expenses associated with settling any claim with respect to such Property Loss Event and (ii) taxes paid or payable as a result thereof; *provided, however*, that evidence of each of (i) and (ii) is provided to the Administrative Agent in form and substance satisfactory to it or (c) the issuance of Stock (other than (A) issuances of Stock by a Subsidiary to a Loan Party and (B) issuances of Stock by a Permitted Joint Venture) or Indebtedness (other than Indebtedness permitted under *Section 7.1 (Indebtedness)*), the cash proceeds received from such issuance or incurrence, net of attorney's fees, notarial fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other customary fees and expenses incurred in connection therewith.

"New Excluded Projects" means each of the following New Projects: (a) any New Project that was not approved by the Borrower in accordance with its customary origination and approval procedures (including, without limitation, the policies and procedures described in the Executive Review Committee Charter and Schedule of Signature Authority delivered to the Administrative Agent prior to the Closing Date, as amended or otherwise modified at the reasonable request of, or otherwise with the consent of, the Administrative Agent) and (b) any New Project requiring funding in excess of any funding provided therefor in the Budget together with any approved updates thereto (which Budget shall include, without limitation, consideration of cash flow projections for such New Project).

"New Projects" means any Project for which the related Contractual Obligations were not entered into as of the Closing Date.

"Non-Financial Letter of Credit" means any letter of credit issued by an Issuer pursuant to *Section 2.3 (Letters of Credit)* for the account of the Borrower securing only trade payables or non-financial performance obligations.

"Non-Funding Lender" has the meaning specified in *clause (d) Section 2.2 (Borrowing Procedures)*.

"Non-Stayed Order" means an order of the Bankruptcy Court that is in full force and effect, as to which no stay has been entered and that has not been reversed, modified, vacated or overturned.

"Non-U.S. Lender" means each Lender or the Administrative Agent that is not a United States person as defined in subclause (30) of clause (a) of Section 7701 of the Internal Revenue Code.

"Note" means a promissory note of the Borrower payable to the order of any Lender in a principal amount equal to the amount of such Lender's Commitment evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from the Loans owing to such Lender. For the

avoidance of doubt, this Agreement requires "*Notes*" to be in the form of *Exhibit B (Form of Note)*.

"*Notice of Borrowing*" has the meaning specified in *clause (a) of Section 2.2 (Borrowing Procedures)*.

"*Obligations*" means the Loans, the Letter of Credit Obligations and all other amounts, obligations, covenants and duties owing by the Borrower to the Administrative Agent, any Lender, any Issuer, any Affiliate of any of them or any Indemnitee, of every type and description (whether by reason of an extension of credit, operation of the cash management system provided hereunder and in the Cash Management Order, opening or amendment of a letter of credit or payment of any draft drawn thereunder, loan, guaranty, indemnification, foreign exchange or currency swap transaction, interest rate hedging transaction or otherwise), arising under this Agreement, any other Loan Document, any Hedging Contract entered into with any Lender after the date hereof in connection herewith, any agreement pursuant to which a Lender or an Affiliate thereof provides cash management services to a Loan Party in connection with this Agreement, or any other Loan Document, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired and whether or not evidenced by any note, guaranty or other instrument or for the payment of money, and includes all letter of credit, cash management and other fees, interest, charges, expenses, fees, attorneys' fees and disbursements and other sums chargeable to the Borrower under this Agreement, any other Loan Document, any Hedging Contract or any agreement for cash management services entered into in connection with this Agreement or any other Loan Document and all obligations of the Borrower hereunder to cash collateralize Letter of Credit Obligations. For the avoidance of doubt, if any Lender provides cash management services to any Loan Party and ceases to be a Lender thereafter but continues to provide such cash management services, such Lender shall continue to be considered a "Lender" (but only in respect of its cash management services and the amounts, obligations, covenants and duties owing by the Borrower and related thereto) for purposes of this definition and the definition of "*Indemnitee*".

"*Orders*" means the Interim Order or the Final Order, as applicable.

"*Outstandings*" means, at any particular time, the sum of (a) the principal amount of the Loans outstanding at such time *plus* (b) the Letter of Credit Obligations outstanding at such time.

"*Patents*" means (a) all letters patent of the United States, any other country or any political subdivision thereof and all reissues and extensions thereof, (b) all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof and (c) all rights to obtain any reissues or extensions of the foregoing.

"*Patent License*" means all agreements, whether written or oral, providing for the grant by or to any Grantor or any of its Subsidiaries of any right to manufacture, use, import, sell or offer for sale any invention covered in whole or in part by a Patent.

"*PBGC*" means the Pension Benefit Guaranty Corporation or any successor thereto.

"*Permanent Facility*" means that portion of the Facility made available to the Borrower from and after the Entry Date.

"*Permit*" means any permit, approval, authorization, license, variance or permission required from a Governmental Authority under an applicable Requirement of Law.

"*Permitted Balance Accounts*" means, collectively, (i) the Concentration Account, (ii) Account No. _____ at Fleet Bank Boston, [address], and No. _____ at First Union, [address], both of which are in existence as of the date hereof, (iii) Accounts, (iv) accounts of any foreign Subsidiary, (v) accounts of any Permitted Joint Venture, (vi) that portion of the proceeds owing to Raytheon in Account No. _____ at Fleet Bank Boston which is in existence on the date hereof and (vii) pay through accounts, payroll and disbursement accounts funded through the Concentration Account.

"*Permitted Joint Venture*" means the Westinghouse Subsidiaries and any other joint venture (which may be in the form of any limited liability company or other entity) in which the Borrower or any of its Subsidiary holds Stock or Stock Equivalents, or otherwise participates or invests in; *provided, however*, that (a) other than in respect of the Westinghouse Subsidiaries, the other investors or participants in such joint venture participate in such joint venture on substantially the same terms as the Borrower or such Subsidiary, (b) other than in respect of the Westinghouse Subsidiaries, the existence and activities of such joint venture are limited to the duration and scope of the specific Projects relating thereto (established to provide engineering, construction, mining, manufacturing, development, operations and maintenance or other services, as the case may be), (c) the Lenders have a valid, perfected security interest with the Requisite Priority in (i) the proceeds of a redemption, retirement, sinking fund or similar payment, sale or other disposition for value of the Stock, Stock Equivalents or other interests in such joint venture held by the Borrower or any of its Subsidiaries and (ii) all amounts payable by, and dividends, distributions and other payments on account of the Stock, Stock Equivalents or other interests in, such joint venture to the Borrower or any of its Subsidiaries and (d) no Loan Party shall, pursuant to such joint venture, be under any Contractual Obligation to make Investments or incur Guaranty Obligations after the later of the Closing Date and the initial formation of such joint venture that would be in violation of any provision of this Agreement.

"*Permitted Prepetition Claim Payment*" means a payment (as adequate protection or otherwise) on account of any Claim arising or deemed to have arisen prior to the Petition Date, that is made pursuant to authority granted by a Non-Stayed Order of the Bankruptcy Court; *provided, however*, that no such payment shall be made after the occurrence and during the continuance of a Default or an Event of Default.

"*Person*" means an individual, partnership, corporation (including a business trust), joint stock company, estate, trust, limited liability company, unincorporated association, joint venture or other entity, or a Governmental Authority.

"*Petition Date*" has the meaning specified in the recitals to this Agreement.

"*Plan of Reorganization*" means that certain plan of reorganization filed with the Bankruptcy Court in substantially the form of *Exhibit K (Form of Plan of Reorganization)* and in form and substance satisfactory as of the Closing Date to the Administrative Agent and each Lender, and with such amendments as may be approved by the Administrative Agent and the Supermajority Lenders; *provided, however*, anything to the contrary set forth herein notwithstanding, the Plan of Reorganization (or any amendments or modifications thereto) shall not, under any circumstances, provide for the

treatment of the Obligations in any manner other than payment in full in cash on the effective date of the Plan of Reorganization (or, with respect to any outstanding Letters of Credit, cash collateralization in full), unless and only to the extent that a Lender expressly agrees to alternative treatment with respect to its Ratable Portion of the Obligations.

"Pledged Collateral" means, collectively, the Pledged Notes, the Pledged Stock, the Pledged Partnership Interests, the Pledged LLC Interests, any other Investment Property of any Grantor, all certificates or other instruments representing any of the foregoing, all Security Entitlements of any Grantor in respect of any of the foregoing, all dividends, interest distributions, cash, warrants, rights, instruments and other property or Proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing. Pledged Collateral may be General Intangibles or Investment Property.

"Pledged LLC Interests" means all of any Grantor's right, title and interest as a member of any LLC and all of such Grantor's right, title and interest in, to and under any LLC Agreement to which it is a party.

"Pledged Notes" means all right, title and interest of any Grantor, in the Instruments evidencing all Indebtedness owed to such Grantor, including all Indebtedness described on *Schedule 4.22 (Pledged Collateral)*, issued by the obligors named therein, and all interest, cash, Instruments and other property or Proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness.

"Pledged Partnership Interests" means all of any Grantor's right, title and interest as a limited or general partner in all partnerships and all of such Grantor's right, title and interest in, to and under any partnership agreements to which it is a party.

"Pledged Stock" means the shares of capital stock owned by each Grantor, including all shares of capital stock listed on *Schedule 4.22 (Pledged Collateral)*.

"Prepetition Credit Agreement" means the Credit Agreement, dated as of July 7, 2000, among the Borrower, the Lenders named therein, Bank of Montreal, as syndication agent and CSFB, as administrative agent, collateral agent and arranger, as amended as of the date hereof.

"Prepetition Lenders" means each "Lender", "Issuing Bank" and "Agent" under and as defined in the Prepetition Credit Agreement.

"Prepetition Liens" has the meaning specified in the Orders.

"Prepetition Obligations" means the "Obligations" under and as defined in the Prepetition Credit Agreement.

"Prime Rate" means the rate of interest *per annum* established from time to time by the Administrative Agent as its prime rate in effect as its principal office in New York City. Each change in the Prime Rate shall be effective on the date such change is publicly announced as being effective.

"Proceeds" means any and all "proceeds", as such term is defined in Section 9-306 of the

UCC.

"Project" means any construction, engineering, mining, manufacturing, development, operation, maintenance or other project consisting in the consummation of transactions contemplated in a set of Contractual Obligations (including financial documents) with a Governmental Authority, sponsor, developer or other Person, including Government Contracts and Contractual Obligations for the development, design, engineering, construction, equipment, testing, commissioning, completion, management, ownership, operation, insurance, maintenance and repair of certain facilities (at a specified location) or performance of certain other works (whether completed or uncompleted) or any other services. *"Project"* includes, without limitation, all such Contractual Obligations, any transaction contemplated in such Contractual Obligation, the project company or other Person organized for the purpose of executing such Contractual Obligations (and any asset owned or leased thereby), any equipment and other assets owned or leased by any Loan Party to consummate such Contractual Obligations, and the expenses (including related overhead expenses) related thereto.

"Projections" means the Quarter Projections and those financial projections set forth in the Business Plan.

"Property Loss Event" means any loss of or damage to property of any Loan Party that results in the receipt by such Person of proceeds of insurance in excess of \$5,000,000 or any taking of property of any Loan Party or condemnation of property (or deed in lien thereof) of the Borrower or any of its Subsidiaries that results in the receipt by such Person of a compensation payment in respect thereof in excess of \$5,000,000.

"Protective Advances" means all expenses, disbursements and advances incurred by the Administrative Agent pursuant to the Loan Documents after the occurrence and during the continuance of an Event of Default that the Administrative Agent, in its sole discretion, deems necessary or desirable to preserve or protect the Collateral or any portion thereof or to enhance the likelihood or maximize the amount of repayment of the Obligations.

"Purchasing Lender" has the meaning specified in *clause (a) of Section 12.7 (Sharing of Payments, Etc.)*.

"Quarter Projection" has the meaning specified in *subclause (i) clause (c) of Section 5.1 (Financial Statements)*.

"Ratable Portion" or *"ratably"* means, with respect to any Lender at any time, the percentage obtained by dividing (a) the Commitment of such Lender by (b) the Total Commitment at such time (or, at any time after the Termination Date, the percentage obtained by dividing the aggregate outstanding principal balance of the Outstandings owing to such Lender by the aggregate outstanding principal balance of the Outstandings owing to all Lenders).

"Raytheon Litigation" means (a) Case No. CV OC 0101422D, Washington Group International, Inc. (formerly known as Morrison Knudsen Corporation) v. Raytheon Company and Raytheon Engineers & Constructors International, Inc. in the district court of the fourth judicial district of the State of Idaho, in and for the county of ADA and (b) Raytheon Company and Raytheon Engineers and Constructors International Inc. v. Washington Group International, Inc., a Delaware corporation, and

Washington Group International, Inc., an Ohio corporation, Case No. AAA #51 168 000161 01.

"Real Property" means all of those plots, pieces or parcels of land now owned, leased or hereafter acquired or leased by the Borrower or any of its Subsidiaries (the *"Land"*), together with the right, title and interest of the Borrower, if any, in and to the streets, the land lying in the bed of any streets, roads or avenues, opened or proposed, in front of, the air space and development rights pertaining to, the Land and the right to use such air space and development rights, all rights of way, privileges, liberties, tenements, hereditaments and appurtenances belonging or in any way appertaining thereto, all fixtures, all easements now or hereafter benefiting the Land and all royalties and rights appertaining to the use and enjoyment of the Land, including all alley, vault, drainage, mineral, water, oil and gas rights, together with all of the buildings and other improvements now or hereafter erected on the Land, and any fixtures appurtenant thereto.

"Register" has the meaning specified in *clause (c) of Section 12.2 (Assignments and Participations)*.

"Reimbursement Obligations" means all matured reimbursement or repayment obligations of the Borrower to any Issuer with respect to amounts drawn under Letters of Credit.

"Release" means, with respect to any Person, any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration, in each case, of any Contaminant into the indoor or outdoor environment or into or out of any property owned by such Person, including the movement of Contaminants through or in the air, soil, surface water, ground water or property.

"Remedial Action" means all actions required to (a) clean up, remove, treat or in any other way address any Contaminant in the indoor or outdoor environment, (b) prevent the Release or threat of Release or minimize the further Release so that a Contaminant does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care.

"Requirement of Law" means, with respect to any Person, the common law and all federal, state, local and foreign laws, rules, regulations, orders, judgments, decrees and other legal requirements or determinations of any Governmental Authority or arbitrator, applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Requisite Lenders" means, collectively, at any time on or before the Termination Date, Lenders having more than fifty percent (50%) of the Total Commitment in effect at such time and, after the Termination Date, Lenders having more than fifty percent (50%) of the aggregate Outstandings at such time. A Non-Funding Lender shall not be included in the calculation of *"Requisite Lenders"* (except where the failure to make any payment is due to administrative or technical delays).

"Requisite Priority" means the following (a) with respect to the Borrower and Debtor Guarantors, subject to the Carve-Out:

pursuant to Bankruptcy Code § 364(c)(2), a first priority, perfected Lien upon each Loan Party's right, title and interest in, to and under the Collateral that is not otherwise encumbered by a valid

perfected security interest or lien on the Petition Date;

pursuant to Bankruptcy Code § 364(c)(3), a second priority, junior, perfected Lien upon all of each Loan Party's right, title and interest in, to and under all other Collateral which is subject to a validly perfected security interest or lien in existence as of the Petition Date, or a valid lien perfected (but not granted) after the Petition Date to the extent such perfection in respect of a pre-Petition Date claim is expressly permitted under the Bankruptcy Code; and

pursuant to Bankruptcy Code § 364(d)(1), a first priority, senior, priming, perfected Lien upon all of each Loan Party's right, title and interest in, to and under the "Collateral" under the Prepetition Credit Agreement (but subject to the liens of other third parties set forth in subsection 3(i) above).

(b) with respect to any other Loan Party, a valid, perfected first priority lien and security interest, subject only to Liens permitted under *Section 7.2 (Liens, Etc.)*.

"*Responsible Officer*" means, with respect to any Person, any of the principal executive officers, managing members or general partners of such Person, but in any event, with respect to financial matters, the chief financial officer, treasurer or controller of such Person.

"*Restricted Payment*" means (a) any dividend, distribution or any other payment, whether direct or indirect, on account of any Stock or Stock Equivalents of the Borrower or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in Stock or Stock Equivalents or a dividend or distribution payable solely to the Borrower or one or more Guarantors, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Stock or Stock Equivalents of the Borrower or any of its Subsidiaries now or hereafter outstanding other than one payable solely to the Borrower or one or more Guarantors and (c) any payment or prepayment of principal, premium (if any), interest, fees (including fees to obtain any waiver or consent in connection with any Indebtedness) or other charges on, or redemption, purchase, retirement, defeasance, sinking fund or similar payment with respect to, any Indebtedness of the Borrower or any of its Subsidiaries or any other Loan Party, other than any required or mandatory redemptions, retirements, purchases or other payments, in each case to the extent permitted to be made by the terms of such Indebtedness after giving effect to any applicable subordination provisions.

"*Scheduled Termination Date*" means February 14, 2002.

"*Secured Obligations*" means, (a) in the case of the Borrower, the Obligations, and (b) in the case of any other Loan Party, the obligations of such Loan Party under the Guaranty and the other Loan Documents to which it is a party.

"*Secured Parties*" means the Lenders, the Issuers, the Administrative Agent, each of their respective successors and assigns and any other holder of any of the Obligations or of any other obligations under the Loan Documents, including the beneficiaries of each indemnification obligation undertaken by the Loan Parties and the Administrative Agent.

"*Securities Account*" has the meaning specified in Article 8 of the UCC.

"*Securities Intermediary*" has the meaning specified in Article 8 of the UCC.

"*Security*" means any Stock, Stock Equivalent, voting trust certificate, bond, debenture, note or other evidence of Indebtedness, whether secured, unsecured, convertible or subordinated, or any certificate of interest, share or participation in, or any temporary or interim certificate for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, but shall not include any evidence of the Obligations.

"*Standby Letter of Credit*" means any letter of credit issued pursuant to *Section 2.3 (Letters of Credit)* that is not a Non-Financial Letter of Credit.

"*Stock*" means shares of capital stock (whether denominated as common stock or preferred stock), beneficial, partnership or membership interests, participations or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity, whether voting or non-voting.

"*Stock Equivalents*" means all securities convertible into or exchangeable for Stock and all warrants, options or other rights to purchase or subscribe for any Stock, whether or not presently convertible, exchangeable or exercisable.

"*Subsidiary*" means, with respect to any Person, any corporation, partnership, limited liability company or other business entity of which an aggregate of 50% or more of the outstanding Voting Stock is, at the time, directly or indirectly, owned or controlled by such Person or one or more Subsidiaries of such Person.

"*Supermajority Lenders*" means, collectively, at any time on or before the Termination Date, Lenders having more than sixty-six and two-thirds percent (66 2/3%) of the Total Commitment in effect at such time and, after the Termination Date, Lenders having more than sixty-six and two-third percent (66 2/3%) of the aggregate Outstandings at such time. A Non-Funding Lender shall not be included in the calculation of "*Supermajority Lenders*."

"*Tax Affiliate*" means, with respect to any Person, (a) any Subsidiary of such Person and (b) any Affiliate of such Person with which such Person files or is eligible to file consolidated, combined or unitary tax returns.

"*Tax Return*" has the meaning specified in *clause (a) of Section 4.7 (Taxes)*.

"*Taxes*" has the meaning specified in *clause (a) of Section 2.13 (Taxes)*.

"*Termination Date*" means the earliest of (a) the Scheduled Termination Date, (b) the effective date of the Plan of Reorganization and (c) the date on which the Obligations become due and payable pursuant to *Section 8.2 (Remedies)*.

"*Title IV Plan*" means a pension plan, other than a Multiemployer Plan, covered by Title IV of ERISA and to which any Loan Party or any ERISA Affiliate has any obligation or liability (contingent or otherwise).

"Total Commitment" means, on any day, the aggregate Commitment on such day of all the Lenders, which aggregate Commitment shall not exceed \$200,000,000, as such amount may be reduced in accordance with this Agreement and increased pursuant to *clause (b) of Section 2.1 (The Commitments)*; *provided, however*, that the Total Commitment shall not exceed \$350,000,000 at any time.

"Trademarks" means (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, in each case now existing or hereafter adopted or acquired and together with all goodwill associated therewith, all registrations and recordings thereof, all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or political subdivision thereof or otherwise and, in each case, all common-law rights related thereto and (b) the right to obtain all renewals thereof.

"Trademark License" means any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark.

"Treasury Regulations" means the final and temporary (but not proposed) income tax regulations promulgated under the Internal Revenue Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"UCC" means, at any time, the Uniform Commercial Code in effect in the State of New York at such time.

"Unfunded Pension Liability" means, with respect to any Loan Party at any time, the sum of (a) the amount, if any, by which the present value of all accrued benefits under each Title IV Plan (other than any Title IV Plan subject to Section 4063 of ERISA) exceeds the fair market value of all assets of such Title IV Plan allocable to such benefits in accordance with Title IV of ERISA, as determined as of the most recent valuation date for such Title IV Plan using the actuarial assumptions in effect under such Title IV Plan, (b) the aggregate amount of withdrawal liability that could be assessed under Section 4063 with respect to each Title IV Plan subject to such section, separately calculated for each such Title IV Plan as of its most recent valuation date and (c) for a period of five years following a transaction reasonably likely to be covered by Section 4069 of ERISA, the liabilities (whether or not accrued) that could be avoided by any Loan Party or any ERISA Affiliate as a result of such transaction.

"Unused Commitment Fee" has the meaning specified in *clause (a) of Section 2.10 (Fees)*.

"U.S. Trustee" means the United States Trustee for the District of Nevada.

"Vehicles" means all vehicles covered by a certificate of title law of any state.

"Voting Stock" means Stock of any Person having ordinary power to vote in the election of members of the board of directors, managers, trustees or other controlling Persons, of such Person (irrespective of whether, at the time, Stock of any other class or classes of such entity shall have or might have voting power by reason of the happening of any contingency).

"Westinghouse Subsidiaries" means Westinghouse Government Services Company, LLC, Westinghouse Government Environmental Services Company, LLC and their respective Subsidiaries.

"Wholly-Owned Subsidiary" of any Person, means any other Person all of the Stock of which (other than director's qualifying shares, as may be required by law) is owned by such Person directly or by other Wholly-Owned Subsidiaries of such Person; *provided, however*, that, *"Wholly-Owned Subsidiaries"* of the Borrower or any other Loan Party shall not include the Westinghouse Subsidiaries.

"Withdrawal Liability" means, with respect to the Borrower or any of its Subsidiaries at any time, the aggregate liability incurred (whether or not assessed) with respect to all Multiemployer Plans pursuant to Section 4201 of ERISA or for increases in contributions required to be made pursuant to Section 4243 of ERISA.

Computation of Time Periods

In this Agreement, in the computation of periods of time from a specified date to a later specified date, the word *"from"* means "from and including" and the words *"to"* and *"until"* each mean "to but excluding" and the word *"through"* means "to and including."

Accounting Terms and Principles

Except as set forth below, all accounting terms not specifically defined herein shall be construed in conformity with GAAP and all accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in conformity with GAAP.

If any change in the accounting principles used in the preparation of the most recent Financial Statements referred to in *Section 5.1 (Financial Statements)* is hereafter required or permitted by the rules, regulations, pronouncements and opinions of the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or any successors thereto) and such change is adopted by the Borrower with the agreement of its independent public accountants and results in a change in any of the calculations required by *Article VII (Negative Covenants)* had such accounting change not occurred, the parties hereto agree in good faith to enter into negotiations in order to amend such provisions so as to equitably reflect such change with the desired result that the criteria for evaluating compliance with such covenants by the Borrower shall be the same after such change as if such change had not been made; *provided, however*, that no change in GAAP that would affect a calculation that measures compliance with any covenant contained in *Article VII (Negative Covenants)* shall be given effect until such provisions are amended to reflect such changes in GAAP.

Certain Terms

The words *"herein," "hereof"* and *"hereunder"* and similar words refer to this Agreement as a whole and not to any particular Article, Section, clause or subclause in this Agreement.

Unless otherwise expressly indicated herein, (i) references in this Agreement to an Exhibit, Schedule, Article, Section, clause or subclause refer to the appropriate Exhibit or Schedule to, or

Article, Section, clause or subclause in this Agreement and (ii) the words “above” and “below”, when following a reference to a clause or a subclause of any Loan Document, refer to a clause or subclause within, respectively, the same Section or clause.

Each agreement defined in this *Article I (Definitions, Interpretation And Accounting Terms)* shall include all appendices, exhibits and schedules thereto. If the prior written consent of the Requisite Lenders is required hereunder for an amendment, restatement, supplement or other modification to any such agreement or the Budget and such consent is obtained, references in this Agreement to such agreement or the Budget shall be to such agreement as so amended, restated, supplemented or modified.

References in this Agreement to any statute shall be to such statute as amended or modified and in effect at the time any such reference is operative.

The term “including” when used in any Loan Document means “including without limitation”, except when used in the computation of time periods. The phrase “in the aggregate” when used in any Loan Document means “individually or in the aggregate”, unless otherwise expressly noted.

The terms “Lender,” “Issuer” and “Agent” include their respective successors.

Upon the appointment of any successor Agent pursuant to *Section 11.6 (Successor Agent)*, references to CSFB in *Section 11.3 (The Administrative Agent Individually)* and to CSFB in the definition of Base Rate shall be deemed to refer to the financial institution then acting as the Administrative Agent or one of its Affiliates if it so designates.

Terms not otherwise defined herein and defined in the UCC are used herein with the meanings specified in the UCC.

The Facility

The Commitments

On the terms and subject to the conditions contained in this Agreement, each Lender severally agrees to make loans (each a “Loan”) to the Borrower from time to time on any Business Day during the period from the date hereof until the Termination Date in an aggregate amount not to exceed at any time outstanding for all such Loans by such Lender such Lender’s Commitment; *provided, however*, that at no time shall any Lender be obligated to make a Loan in excess of such Lender’s Ratable Portion of the Available Credit; *provided, further*, that, prior to the Entry Date of the Final Order, the aggregate Outstandings shall not exceed the Interim Facility Amount, and no Loans shall be made (and no Letters of Credit shall be issued) in excess thereof. Within the limits of each Lender’s Commitment, amounts of Loans repaid may be reborrowed under this *Section 2.1 (The Commitments)*.

Commitment Increase.

Promptly after receiving such request from the Borrower, the Administrative Agent shall

notify the Lenders of the request by the Borrower for an increase of up to \$150,000,000 in the Total Commitment (the "*Commitment Increase*"), for a Total Commitment of up to \$350,000,000 after giving effect to such Commitment Increase, to be effective as of the Increase Date, which notice shall include the date by which the Lenders wishing to participate in the Commitment Increase must commit to an increase in the amount of their respective Commitments (the "*Commitment Date*"). No more than one such Commitment Increase shall be made. Each Lender that is willing to participate in the requested Commitment Increase (each an "*Increasing Lender*") shall, in its sole discretion, give written notice to the Administrative Agent on or prior to the Commitment Date of the amount by which it is willing to increase its Commitment; *provided, however*, that the increase in such Increasing Lender's Commitment shall be in an amount equal to \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof.

Promptly following the Commitment Date, the Administrative Agent shall notify the Borrower as to the amount, if any, by which the existing Lenders are willing to participate in the requested Commitment Increase. If the aggregate amount by which the existing Lenders are willing to participate in the requested Commitment Increase on any such Commitment Date is less than the requested Commitment Increase, then the Borrower may (subject to the consent of the Supermajority Lenders) extend offers to one or more other financial institutions or other Eligible Assignee to participate in any portion of the requested Commitment Increase that has not been committed to by the Lenders as of the Commitment Date; *provided, however*, that the Commitment of each such financial institution shall be in an amount equal to \$1,000,000 or an integral multiple of \$1,000,000 in excess thereof.

The Commitment Increase shall become effective upon a date (the "*Increase Date*") (A) on or after the 45th day after the Closing Date and (ii) on or after the satisfaction of conditions precedent to be agreed by the Administrative Agent, the Loan Parties and the Requisite Lenders (which may include, without limitation, increases in the Applicable Margin, fees, amendments and covenants) and the receipt by the Administrative Agent of each of the following:

(x) certified copies of resolutions of the Board of Directors of the Borrower approving the Commitment Increase and the corresponding modifications to this Agreement and (y) an opinion of counsel for the Borrower (which may be in-house counsel), in a form reasonably satisfactory to the Administrative Agent;

confirmation from each Increasing Lender of the increase in the amount of its Commitment in a writing satisfactory to the Borrower and the Administrative Agent;

an assumption agreement (an "*Assumption Agreement*") from each Eligible Assignee (or other financial institution) that accepts an offer to participate in such Commitment Increase in accordance with *clause (ii)* above (each such Eligible Assignee or other financial institution, an "*Additional Lender*") , if any, in form and substance satisfactory to the Borrower and the Administrative Agent, duly executed by such Assignee, the Administrative Agent and the Borrower;

any costs, expenses, fees and other amounts then due hereunder and under the Fee Letters; and

the consent of the Supermajority Lenders.

As of the Increase Date, (A) the Commitment of each Increasing Lender for the

requested Commitment Increase shall be increased by the amount set forth in such Lender's confirmation delivered pursuant to *clause (B)* above, (B) each Additional Lender shall be deemed to become a Lender party to this Agreement and (C) the Administrative Agent shall notify the Lenders (including each Additional Lender) and the Borrower, on or before 1:00 P.M. (New York City time), by telecopier or telex, of the occurrence of the Commitment Increase to be effected on the Increase Date and shall record in the Register the relevant information with respect to each Increasing Lender and each Additional Lender on such date.

Nothing in this Agreement shall be construed to obligate any Lender to negotiate for (whether or not in good faith), solicit, provide or consent to any increase in the Commitments, and any such increase may be subject to changes in any term herein.

Borrowing Procedures

Each Borrowing shall be made on notice given by the Borrower to the Administrative Agent not later than 1:00 P.M. (New York City time) on the date of the proposed Borrowing. Each such notice shall be in substantially the form of *Exhibit C (Form of Notice of Borrowing)* (a "Notice of Borrowing"), specifying (A) the date of such proposed Borrowing, (B) the aggregate amount of such proposed Borrowing, (C) the Available Credit (after giving effect to the proposed Borrowing) and (D) a certification that the proceeds of such Borrowing shall be used solely as set forth in *Section 4.12 (Use of Proceeds)*. Each Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000.

The Administrative Agent shall give to each Lender prompt notice of the Administrative Agent's receipt of a Notice of Borrowing. Each Lender shall, before 3:00 P.M. (New York City time) on the date of the proposed Borrowing, make available to the Administrative Agent at its address referred to in *Section 12.8 (Notices, Etc.)*, in immediately available funds, such Lender's Ratable Portion of such proposed Borrowing. After the Administrative Agent's receipt of such funds and upon fulfillment (or due waiver in accordance with *Section 12.1 (Amendments, Waivers, Etc.)*) of the applicable conditions set forth in *Sections 3.1 (Conditions Precedent to Initial Loans and Letters of Credit)* (on the Closing Date) and *3.2 (Conditions Precedent to Each Loan and Letter of Credit)*, the Administrative Agent shall make such funds available to the Borrower.

Unless the Administrative Agent shall have received notice from a Lender prior to the date of any proposed Borrowing that such Lender will not make available to the Administrative Agent such Lender's Ratable Portion of such Borrowing, the Administrative Agent may assume that such Lender has made such Ratable Portion available to the Administrative Agent on the date of such Borrowing in accordance with this *Section 2.2 (Borrowing Procedures)* and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If, and to the extent that, such Lender shall not have so made such Ratable Portion available to the Administrative Agent, such Lender and the Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent, at (i) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Rate for the first Business Day and thereafter at the interest rate applicable at the time to the Loans comprising such Borrowing. If such Lender shall repay to the Administrative Agent such corresponding amount, such amount so repaid shall constitute such Lender's Loan as part of such Borrowing for purposes of this

Agreement. If the Borrower shall repay to the Administrative Agent such corresponding amount, such payment shall not relieve such Lender of any obligation it may have hereunder to the Borrower.

The failure of any Lender to make the Loan or any payment required by it on the date specified (a "*Non-Funding Lender*"), including any payment in respect of its participation in Letter of Credit Obligations, shall not relieve any other Lender of its obligations to make such Loan or payment on such date but no such other Lender shall be responsible for the failure of any Non-Funding Lender to make a Loan or payment required under this Agreement.

Letters of Credit

On the terms and subject to the conditions contained in this Agreement, each Issuer may, in its sole discretion (but only if approved by the Requisite Lenders for Letters of Credit that, individually or in the aggregate, have a maximum stated amount in excess of \$2,000,000), issue one or more Letters of Credit at the request of the Borrower for the account of the Borrower, any Subsidiary or any Permitted Joint Venture from time to time during the period commencing on the Closing Date and ending on the earlier of the Termination Date and 30 days prior to the Scheduled Termination Date; *provided, however*, that in no event shall any Issuer issue any Letter of Credit if:

any order, judgment or decree of any Governmental Authority or arbitrator shall purport by its terms to enjoin or restrain such Issuer from issuing such Letter of Credit or any Requirement of Law applicable to such Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuer shall prohibit, or request that such Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuer with respect to such Letter of Credit any restriction or reserve or capital requirement (for which such Issuer is not otherwise compensated) not in effect on the date of this Agreement or result in any unreimbursed loss, cost or expense that was not applicable, in effect or known to such Issuer as of the date of this Agreement and that such Issuer in good faith deems material to it;

such Issuer shall have received written notice from the Administrative Agent, any Lender or the Borrower, on or prior to the requested date of issuance of such Letter of Credit, that one or more of the applicable conditions contained in *Sections 3.1 (Conditions Precedent to Initial Loans and Letters of Credit)* (with respect to an issuance on the Closing Date) and *3.2 (Conditions Precedent to Each Loan and Letter of Credit)* is not then satisfied or duly waived in accordance with *Section 12.1 (Amendments, Waivers, Etc.)*;

after giving effect to the issuance of such Letter of Credit, the aggregate Outstandings would exceed the Total Commitment in effect at such time;

after giving effect to the issuance of such Letter of Credit, the sum of (i) the Letter of Credit Undrawn Amounts at such time and (ii) the Reimbursement Obligations at such time exceeds the lower of (x) the amount provided therefor in the Budget and (y) an amount equal to 25% of the Total Commitment then in effect;

such Letter of Credit is to be issued as credit support for a surety or performance bond and the maximum stated amount of such Letter of Credit exceeds 25% (as such amount may be increased by the Administrative Agent from time to time) of the value of such bond;

such Letter of Credit is to be issued to backstop, succeed or replace a letter of credit issued under the Prepetition Credit Agreement or otherwise issued prior to the Petition Date; or

any fees due in connection with a requested issuance have not been paid.

None of the Lenders or Issuers shall have any obligation to issue any Letter of Credit.

In no event shall the expiration date of any Letter of Credit (i) be more than one year after the date of issuance thereof or (ii) be less than five Business Days prior to the Scheduled Termination Date; *provided, however*, that any Letter of Credit with a one-year term may provide for the renewal thereof for additional one-year periods without the consent of the Requisite Lenders.

In no event shall any Letter of Credit be issued (i) to support any Excluded Project or for the account of any Person other than the Borrower, any Subsidiary and, subject to specific restrictions set forth herein and in the Budget, Permitted Joint Ventures and (ii) if the Administrative Agent shall not be satisfied that the Borrower has entered into satisfactory arrangements with its sureties and bonding companies with respect to all existing bonded Projects and any New Project requiring bonding or similar support.

In connection with the issuance of each Letter of Credit, the Borrower shall give the relevant Issuer and the Administrative Agent at least two Business Days' prior written notice, in substantially the form of *Exhibit D (Form of Letter of Credit Request)* (or in such other written or electronic form as is acceptable to the Issuer), of the requested issuance of such Letter of Credit (a "*Letter of Credit Request*"). Such notice shall be irrevocable and shall specify the Issuer of such Letter of Credit, the stated amount of the Letter of Credit requested, (which stated amount shall not be less than \$500,000), the date of issuance of such requested Letter of Credit (which date shall be a Business Day), the date on which such Letter of Credit is to expire (which date shall be a Business Day) and the Person for whose benefit the requested Letter of Credit is to be issued. Such notice, to be effective, must be received by the relevant Issuer and the Administrative Agent not later than 11:00 A.M. (New York City time) on the second Business Day prior to the requested issuance of such Letter of Credit.

Subject to the satisfaction of the conditions set forth in this *Section 2.3 (Letters of Credit)*, the relevant Issuer shall, on the requested date, issue a Letter of Credit on behalf of the Borrower in accordance with such Issuer's usual and customary business practices. No Issuer shall issue any Letter of Credit in the period commencing on the first Business Day after it receives written notice from the Administrative Agent or any Lender that one or more of the conditions precedent contained in *Section 3.2 (Conditions Precedent to Each Loan and Letter of Credit)* shall not on such date be satisfied, and ending when such conditions are satisfied. The relevant Issuer shall not otherwise be required to determine that, or take notice whether, the conditions precedent set forth in *Section 3.2* have been satisfied in connection with the issuance of any Letter of Credit.

If requested by the relevant Issuer, prior to the issuance of each Letter of Credit by such Issuer, and as a condition of such issuance and of the participation of each Lender in the Letter of Credit Obligations arising with respect thereto, the Borrower shall have delivered to such Issuer a letter of credit reimbursement agreement, in such form as the Issuer may employ in its ordinary course of business for its own account (a "*Letter of Credit Reimbursement Agreement*"), signed by the Borrower, and such other documents or items as may be required pursuant to the terms thereof. In the event of any conflict

between the terms of any Letter of Credit Reimbursement Agreement and this Agreement, the terms of this Agreement shall govern.

Each Issuer shall:

give the Administrative Agent written notice (or telephonic notice confirmed promptly thereafter in writing, which may be by telecopier) of the issuance or renewal of a Letter of Credit issued by it, of all drawings under a Letter of Credit issued by it and the payment (or the failure to pay when due) by the Borrower of any Reimbursement Obligation when due (which notice the Administrative Agent shall promptly transmit by telecopy or similar transmission to each Lender).

upon the request of any Lender, furnish to such Lender copies of any Letter of Credit Reimbursement Agreement to which such Issuer is a party and such other documentation as may reasonably be requested by such Lender; and

no later than 10 Business Days following the last day of each calendar month, provide to the Administrative Agent (and the Administrative Agent shall provide a copy to each Lender requesting the same) and the Borrower separate schedules for Non-Financial and Standby Letters of Credit issued by it, in form and substance reasonably satisfactory to the Administrative Agent, setting forth the aggregate Letter of Credit Obligations outstanding at the end of each month and any information requested by the Borrower or the Administrative Agent relating thereto.

Immediately upon the issuance by an Issuer of a Letter of Credit in accordance with the terms and conditions of this Agreement, such Issuer shall be deemed to have sold and transferred to each Lender, and each Lender shall be deemed irrevocably and unconditionally to have purchased and received from such Issuer, without recourse or warranty, an undivided interest and participation, to the extent of such Lender's Ratable Portion, in such Letter of Credit and the obligations of the Borrower with respect thereto (including all Letter of Credit Obligations with respect thereto) and any security therefor and guaranty pertaining thereto.

If an Issuer shall make any disbursement in respect of a Letter of Credit, such Issuer shall promptly notify the Administrative Agent and the Borrower of the details thereof. The Borrower agrees to pay to the Issuer of any Letter of Credit the amount of all Reimbursement Obligations owing to such Issuer under any Letter of Credit issued for its account when such amounts are due and payable pursuant to the terms of the applicable Letter of Credit Reimbursement Agreement (or, if no Letter of Credit Reimbursement Agreement shall have been executed in respect of such Letter of Credit, no later than 2:00 P.M. (New York City time) on the Business Day immediately following the Business Day on which the Borrower shall have received notice from such Issuer that a payment has been made pursuant to such Letter of Credit), irrespective of any claim, set-off, defense or other right that the Borrower may have at any time against such Issuer or any other Person. In the event that any Issuer makes any payment under any Letter of Credit and the Borrower shall not have repaid such amount to such Issuer pursuant to this *clause (i)*, or any payment by the Borrower in respect thereof is rescinded or set aside for any reason, such Reimbursement Obligation shall be payable on demand with interest thereon computed from the date on which such Reimbursement Obligation arose to the date of repayment in full at the rate of interest applicable to past due Loans during such period, and such Issuer shall promptly notify the Administrative Agent, which shall promptly notify each Lender of such failure, and each Lender shall promptly and unconditionally pay to the Administrative Agent for the account of such Issuer the amount of such

Lender's Ratable Portion of such payment in Dollars and in immediately available funds. If the Administrative Agent so notifies such Lender prior to 11:00 A.M. (New York City time) on any Business Day, such Lender shall make available to the Administrative Agent for the account of such Issuer its Ratable Portion of the amount of such payment on such Business Day in immediately available funds. Upon such payment by a Lender, such Lender shall, notwithstanding whether or not the conditions precedent set forth in *Section 3.2 (Conditions Precedent to Each Loan and Letter of Credit)* shall have been satisfied (which conditions precedent the Lenders hereby irrevocably waive) be deemed to have made a Loan to the Borrower in the principal amount of such payment. Whenever any Issuer receives from the Borrower a payment of a Reimbursement Obligation as to which the Administrative Agent has received for the account of such Issuer any payment from a Lender pursuant to this *clause (i)*, such Issuer shall pay to the Administrative Agent and the Administrative Agent shall promptly pay to each Lender, in immediately available funds, an amount equal to such Lender's Ratable Portion of the amount of such payment adjusted, if necessary, to reflect the respective amounts the Lenders have paid in respect of such Reimbursement Obligation.

The Borrower's obligation to pay each Reimbursement Obligation and the obligations of the Lenders to make payments to the Administrative Agent for the account of the Issuers with respect to Letters of Credit shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under any and all circumstances whatsoever, including the occurrence of any Default or Event of Default, and irrespective of:

any lack of validity or enforceability of any Letter of Credit or any Loan Document, or any term or provision therein;

any amendment or waiver of or any consent to departure from all or any of the provisions of any Letter of Credit or any Loan Document;

the existence of any claim, set off, defense or other right that the Borrower, any other party guaranteeing, or otherwise obligated with, the Borrower, any Subsidiary or other Affiliate thereof or any other Person may at any time have against the beneficiary under any Letter of Credit, the Issuer, the Administrative Agent or any Lender or any other Person, whether in connection with this Agreement, any other Loan Document or any other related or unrelated agreement or transaction;

any draft or other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

payment by the Issuer under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit; and

any other act or omission to act or delay of any kind of the Issuer, the Lenders, the Administrative Agent or any other Person or any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of the Borrower's obligations hereunder.

Any action taken or omitted to be taken by the relevant Issuer under or in connection with any Letter of Credit, if taken or omitted in the absence of gross negligence or willful misconduct, shall not put such Issuer under any resulting liability to the Borrower or any Lender. In determining whether drafts and

other documents presented under a Letter of Credit comply with the terms thereof, the Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary and, in making any payment under any Letter of Credit, (x) the Issuer may rely exclusively on the documents presented to it under such Letter of Credit as to any and all matters set forth therein, including reliance on the amount of any draft presented under such Letter of Credit, whether or not the amount due to the beneficiary thereunder equals the amount of such draft and whether or not any document presented pursuant to such Letter of Credit proves to be insufficient in any respect, if such document on its face appears to be in order and whether or not any other statement or any other document presented pursuant to such Letter of Credit proves to be forged or invalid or any statement therein proves to be inaccurate or untrue in any respect whatsoever and (y) any noncompliance in any immaterial respect of the documents presented under such Letter of Credit with the terms thereof shall, in each case, be deemed not to constitute willful misconduct or gross negligence of the Issuer.

If and to the extent such Lender shall not have so made its Ratable Portion of the amount of the payment required by *clause (j)* above available to the Administrative Agent for the account of such Issuer, such Lender agrees to pay to the Administrative Agent for the account of such Issuer forthwith on demand such amount together with interest thereon, for the first Business Day after payment was first due at the Federal Funds Rate and thereafter until such amount is repaid to the Administrative Agent for the account of such Issuer. The failure of any Lender to make available to the Administrative Agent for the account of such Issuer its Ratable Portion of any such payment shall not relieve any other Lender of its obligation hereunder to make available to the Administrative Agent for the account of such Issuer its Ratable Portion of any payment on the date such payment is to be made, but no Lender shall be responsible for the failure of any other Lender to make available to the Administrative Agent for the account of the Issuer such other Lender's Ratable Portion of any such payment.

Reduction and Termination of the Commitments

The Borrower may, upon at least three Business Days' prior notice to the Administrative Agent, terminate in whole or reduce in part ratably the unused portions of the respective Commitments of the Lenders; *provided, however*, that each partial reduction shall be in an aggregate amount that is an integral multiple of \$1,000,000.

Repayment of Loans

The Borrower promises to repay (in cash, in full and in immediately available funds) the entire unpaid principal amount of the Loans and all accrued but unpaid interest thereon on the Scheduled Termination Date or such earlier date on which the Loans shall be due and payable pursuant to the Agreement.

Evidence of Debt

Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing Indebtedness of the Borrower to such Lender resulting from each Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

The Administrative Agent shall maintain accounts in accordance with its usual practice in which it shall record (i) the amount of each Loan made, (ii) the amount of any principal or interest due and payable by the Borrower to each Lender hereunder with respect to each Loan and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower, whether such sum constitutes principal or interest, fees, expenses or other amounts due under the Loan Documents and each Lender's share thereof, if applicable.

The entries made in the accounts maintained pursuant to *clauses (a) and (b)* above shall, to the extent permitted by applicable law, be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided, however*, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms.

Notwithstanding any other provision of the Agreement, in the event that any Lender requests that the Borrower execute and deliver a promissory note or notes payable to such Lender in order to evidence the Indebtedness owing to such Lender by the Borrower hereunder, the Borrower shall promptly execute and deliver a Note or Notes to such Lender evidencing any Loans of such Lender, substantially in the form of *Exhibit B (Form of Note)*.

Optional Prepayments

The Borrower may, upon one Business Day's prior written notice to the Administrative Agent, stating the proposed date and aggregate principal amount of the prepayment, prepay the outstanding principal amount of the Loans in whole or in part; *provided, however*, that each partial prepayment of Loans shall be in an aggregate principal amount that is an integral multiple of \$1,000,000. Upon the giving of such notice of prepayment, the principal amount of Loans specified to be prepaid shall become due and payable on the date specified for such prepayment.

The Borrower shall have no right to prepay the principal amount of any Loan other than as provided in this *Section 2.7 (Optional Prepayments)*.

Mandatory Prepayments

Mandatory Prepayments of Net Cash Proceeds. Upon receipt by the Borrower or any of its Subsidiaries of any Net Cash Proceeds, the Borrower shall immediately prepay the Loans, pay other Obligations or provide cash collateral in respect of Letters of Credit in accordance with *clause (b) below* in an amount equal to 100% of such Net Cash Proceeds, *provided, however*, that in the case of any Net Cash Proceeds arising from a Property Loss Event, the Borrower need not make any payments hereunder to the extent that such Net Cash Proceeds are actually used to repair or replace the damaged or taken property within one hundred and eighty (180) days of the receipt of such Net Cash Proceeds and, pending application of such proceeds, the Borrower has paid the same to the Administrative Agent to be held in a Cash Collateral Account designated by the Administrative Agent. For the avoidance of doubt, if such Net Cash Proceeds are not actually used to repair or replace the damaged or taken property within one hundred and eighty (180) days of the receipt of such Net Cash Proceeds, the preceding proviso shall no longer apply and such Net Cash Proceeds shall be used to prepay the Loans, pay other Obligations or otherwise provide cash collateral in respect of Letters of Credit as provided for in the preceding sentence. Any such mandatory prepayment shall be applied in accordance with *clause (b) below*.

Application of Payments. Subject to the Cash Management Order, prior to the occurrence of any Event of Default, any prepayments made by the Borrower required to be applied in accordance with this *clause (b)* shall be applied as follows (and, following an Event of Default, as provided in *clause (f)* of *Section 2.11 (Payments and Computations)*): *first*, to pay principal of and interest on any portion of the Loans the Administrative Agent may have advanced pursuant to the express provisions of this Agreement on behalf of any Lender, for which the Administrative Agent has not then been reimbursed by such Lender or the Borrower; *second*, to repay the outstanding principal balance of the Loans until such Loans shall have been paid in full; *third*, to provide cash collateral for any Letter of Credit Obligations in the manner set forth in *Section 8.3 (Actions in Respect of Letters of Credit)* until 105% of all Letter of Credit Obligations have been fully cash collateralized in the manner set forth therein; and *fourth*, to repay any other Obligation then due and payable. No repayment of Obligations required to be made pursuant to this *clause (c)* of *Section 2.8 (Mandatory Prepayments)* shall result in a permanent reduction of the Commitments.

Excess Outstandings. If at any time, the aggregate principal amount of Outstandings exceeds the Total Commitment in effect at such time, the Borrower shall forthwith prepay *first*, the Loans then outstanding and, if any excess remains after repayment in full of the aggregate outstanding Loans, the Borrower shall provide cash collateral for the Letter of Credit Obligations in the manner set forth in *Section 8.3 (Actions in Respect of Letters of Credit)* to the extent required to eliminate such excess.

Daily Sweep of all Amounts in Cash Collateral Accounts. Subject to the Cash Management Order, the Borrower hereby irrevocably waives the right to direct, other than after the occurrence and during the continuance of an Event of Default (in which case *clause (f)* of *Section 2.11 (Payments and Computations)* shall apply), the application of all available funds in any Cash Collateral Account, and the Administrative Agent and the Borrower agree that all such funds (other than any Net Cash Proceeds deposited for no more than one hundred and eighty (180) days in a Cash Collateral Account pending application such proceeds pursuant to the proviso set forth in *clause (a)* above) shall be applied on a daily basis pursuant to *clause (b)* above. If, following such application, there are no Loans outstanding and no other Obligations are then due and payable (and cash collateral in an amount of 105% of the Letter of Credit Obligations has been provided), then the Administrative Agent shall cause any remaining funds in the Cash Collateral Account to be paid at the written direction of the Borrower in accordance with the orders of the Bankruptcy Court.

Interest

Rate of Interest. All Loans and the outstanding amount of all other Obligations shall bear interest, in the case of Loans, on the unpaid principal amount thereof from the date such Loans are made and, in the case of such other Obligations, from the date such other Obligations are due and payable until, in all cases, paid in full, except as otherwise provided in *clause (c)* of *Section 2.9 (Interest)*, at a rate per annum equal to the sum of (A) the Base Rate as in effect from time to time *plus* (B) the Applicable Margin.

Interest Payments. (i) Interest accrued on each Loan shall be payable in arrears (A) on the first day of each calendar month, commencing on the first such day following the making of such Loan and (B) if not previously paid in full, at maturity (whether by acceleration or otherwise) of such Loan and (ii) interest accrued on the amount of all other Obligations shall be payable on demand from

and after the time such Obligation becomes due and payable (whether by acceleration or otherwise).

Default Interest. Notwithstanding the rates of interest specified in *clause (a)* of *Section 2.9 (Interest)* or elsewhere herein, effective immediately upon the occurrence of an Event of Default and for as long thereafter as such Event of Default shall be continuing, the principal balance of all Loans and the amount of all other Obligations shall bear interest at a rate that is two percent per annum in excess of the rate of interest applicable to such Loans or such other Obligations from time to time.

Fees

Unused Commitment Fee. The Borrower agrees to pay to each Lender a commitment fee on the average amount by which the Commitment of such Lender exceeds such Lender's Ratable Portion of the Outstandings (the "*Unused Commitment Fee*") from the date hereof until the Termination Date at the Applicable Unused Commitment Fee Rate, payable in arrears (i) on the last day of each calendar month, commencing on the first such day following the Closing Date and (ii) on the Termination Date.

Letter of Credit Fees. The Borrower agrees to pay the following amounts with respect to Letters of Credit issued by any Issuer:

to the Administrative Agent for the account of each Issuer of a Letter of Credit, with respect to each Letter of Credit issued by such Issuer, an issuance fee equal to 0.25% per annum of the maximum amount available from time to time to be drawn under such Letter of Credit, payable in arrears (A) on the last day of each calendar month, commencing on the first such day following the issuance of such Letter of Credit and (B) on the Termination Date;

to the Administrative Agent for the ratable benefit of the Lenders, with respect to each Letter of Credit, a fee accruing at a rate per annum equal to four percent (4%) per annum of the maximum amount available from time to time to be drawn under such Letter of Credit, payable in arrears (A) on the last day of each calendar month, commencing on the first such day following the issuance of such Letter of Credit and (B) on the Termination Date; *provided, however*, that during the continuance of an Event of Default, such fee shall be increased by two (2%) percent per annum and shall be payable on demand; and

to the Issuer of any Letter of Credit, with respect to the issuance, amendment or transfer of each Letter of Credit and each drawing made thereunder, documentary and processing charges in accordance with such Issuer's standard schedule for such charges in effect at the time of issuance, amendment, transfer or drawing, as the case may be.

Additional Fees. The Borrower has agreed to pay to CSFB, for itself and for the benefit of the Lenders and the Issuers, additional fees, the amount and dates of payment of which are embodied in the Fee Letters.

Payments and Computations

The Borrower shall make each payment hereunder (including fees and expenses) not later than 3:00 noon (New York City time) on the day when due, in Dollars, to the Administrative Agent at its address referred to in *Section 12.8 (Notices, Etc.)* in immediately available funds without set-off or

counterclaim. The Administrative Agent shall promptly thereafter cause to be distributed immediately available funds relating to the payment of principal or interest or fees to the Lenders, in accordance with the application of payments set forth in *clauses (e) and (f)* of this *Section 2.11*, as applicable, for the account of their respective Applicable Lending Offices. Payments received by the Administrative Agent after 12:00 noon (New York City time) shall be deemed to be received on the next succeeding Business Day.

All computations of interest and of fees shall be made by the Administrative Agent on the basis of (i) in the case of interest determined by reference to the Prime Rate, a year of 365 of 366 days, as the case may be, and (ii) otherwise, a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest and fees are payable. Each determination by the Administrative Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, the due date for such payment shall be extended to the next succeeding Business Day, and such extension of time shall be included in the computation of payment of interest or fees, as the case may be.

Unless the Administrative Agent shall have received notice from the Borrower to the Lenders prior to the date on which any payment is due hereunder that the Borrower will not make such payment in full, the Administrative Agent may assume that the Borrower has made such payment in full to the Administrative Agent on such date and the Administrative Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If, and to the extent, the Borrower shall not have made such payment in full to the Administrative Agent, each Lender shall repay to the Administrative Agent forthwith on demand such amount distributed to such Lender together with interest thereon at the Federal Funds Rate, for the first Business Day and, thereafter, at the rate applicable to Loans, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Administrative Agent.

Subject to the Cash Management Order and the provisions of *clause (f)* of this *Section 2.11 (Payments and Computations)*, all payments and any other amounts received by the Administrative Agent from or for the benefit of the Borrower or any other Loan Party shall be applied as set forth in *clause (b)* of *Section 2.8 (Mandatory Prepayments)*. Payments in respect of Loans received by the Administrative Agent shall be distributed to each Lender in accordance with such Lender's Ratable Portion, and all payments of fees and all other payments in respect of any other Obligation shall be allocated among such of the Lenders and the Issuers as are entitled thereto, and, if to the Lenders, in proportion to their respective Ratable Portions.

Subject to the provisions of the Cash Management Order, the Borrower hereby irrevocably waives the right to direct, after the occurrence and during the continuance of an Event of Default, the application of any and all payments in respect of the Obligations and any proceeds of Collateral, and agrees that the Administrative Agent may, and shall upon either (A) the written direction of the Requisite Lenders or (B) the acceleration of the Obligations pursuant to *Section 8.2 (Remedies)*, apply all payments in respect of any Obligations and all funds on deposit in any Cash Collateral Account and all other proceeds of Collateral in the following order:

first, to pay interest on and then principal of any portion of the Loans the Administrative Agent may have advanced on behalf of any Lender for which the Administrative Agent has not then been reimbursed by such Lender or the Borrower;

second, to pay Obligations in respect of any expense reimbursements (including fees and expenses in respect of cash management services) or indemnities then due the Administrative Agent;

third, to pay Obligations in respect of any expense reimbursements or indemnities (including in respect of cash management services) then due to the Lenders and the Issuers;

fourth, to pay Obligations in respect of any fees then due to the Administrative Agent, the Lenders and the Issuers;

fifth, to pay interest then due and payable in respect of the Loans and Reimbursement Obligations;

sixth, to pay or prepay principal payments on the Loans and Reimbursement Obligations and to provide cash collateral for 105% of the outstanding Letter of Credit Undrawn Amounts in the manner described in *Section 8.3 (Actions in Respect of Letters of Credit)*, ratably to the aggregate principal amount of such Loans, Reimbursement Obligations and Letter of Credit Undrawn Amounts; and

seventh, to the ratable payment of all other Obligations;

provided, however, that, if sufficient funds are not available to fund all payments to be made in respect of any of the Obligations described in any of the foregoing *clauses first through seventh*, the available funds being applied with respect to any such Obligation (unless otherwise specified in such clause) shall be allocated to the payment of such Obligations ratably, based on the proportion of the Administrative Agent's and each Lender's or Issuer's interest in the aggregate outstanding Obligations described in such clauses. The order of priority set forth in *clauses first through seventh* of this *clause (f)* may, at any time and from time to time, be changed by the agreement of the Requisite Lenders without necessity of notice to or consent of or approval by the Borrower, any Secured Party that is not a Lender or an Issuer, or any other Person. The order of priority set forth in *clauses first through fifth* of this *clause (f)* may be changed only with the prior written consent of the Administrative Agent in addition to the Requisite Lenders.

At the option of the Administrative Agent, principal on the Reimbursement Obligations, interest, fees, expenses and other sums due and payable in respect of the Loans and Protective Advances may be paid from the proceeds of Loans. The Borrower hereby authorizes the Lenders to make Loans pursuant to *clause (a) of Section 2.2 (Borrowing Procedures)* from time to time in such Lender's discretion, in the amounts of any and all principal amount payable with respect to the Reimbursement Obligations, interest, fees, expenses and other sums payable in respect of the Loans, and further authorizes the Administrative Agent to give the Lenders notice of any Borrowing with respect to such Loans and to distribute the proceeds of such Loans to pay such amounts. The Borrower agrees that all such Loans so made shall be deemed to have been requested by it (irrespective of the satisfaction of the conditions in *Section 3.2 (Conditions Precedent to Each Loan and Letter of Credit)*, which conditions the Lenders irrevocably waive) and directs that all proceeds thereof shall be used to pay such amounts.

Capital Adequacy

If at any time any Lender determines that (a) the adoption of or any change in or in the interpretation of any law, treaty or governmental rule, regulation or order after the date of this Agreement regarding capital adequacy, (b) compliance with any such law, treaty, rule, regulation, or order (as so changed or interpreted) or (c) compliance with any guideline or request or directive from any central bank or other Governmental Authority (whether or not having the force of law) shall have the effect of reducing the rate of return on such Lender's (or any corporation controlling such Lender's) capital as a consequence of its obligations hereunder or under or in respect of any Letter of Credit to a level below (by a level determined to be material by such Lender in its sole discretion) that which such Lender or such corporation could have achieved but for such adoption, change, compliance or interpretation, then, upon demand from time to time by such Lender (with a copy of such demand to the Administrative Agent), the Borrower shall pay to the Administrative Agent for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender for such reduction. A certificate as to such amounts setting forth in reasonable details the basis for such demand and a calculation of such amount and submitted to the Borrower and the Administrative Agent by such Lender shall be conclusive and binding for all purposes, absent manifest error.

Taxes

Except as otherwise provided in *clauses (f), (g) and (h)* below, all payments by any Loan Party under each Loan Document shall be made free and clear of, and without deduction for, any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding (i) in the case of each Lender and the Administrative Agent (A) taxes measured by its net income, and franchise taxes imposed on it, by the jurisdiction (or any political subdivision thereof) under the laws of which such Lender or the Administrative Agent (as the case may be) is organized and (B) any United States withholding taxes payable with respect to payments under the Loan Documents under laws (including any statute, treaty or regulation) in effect on the Closing Date (or, in the case of an Eligible Assignee, the date of the Assignment and Acceptance) applicable to such Lender or the Administrative Agent, as the case may be, but not excluding any United States withholding taxes payable as a result of any change in such laws occurring after the Closing Date (or the date of such Assignment and Acceptance) and (ii) in the case of each Lender, taxes measured by its net income, and franchise taxes imposed on it, as a result of a present or former connection between such Lender and the jurisdiction of the Governmental Authority imposing such tax or any taxing authority thereof or therein (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "*Taxes*"). Except as otherwise provided in *clauses (f), (g) and (h)* below, if any Taxes shall be required by law to be deducted from or in respect of any sum payable under any Loan Document to any Lender or the Administrative Agent (w) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this *Section 2.13*) such Lender or the Administrative Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (x) the relevant Loan Party shall make such deductions, (y) the Borrower shall pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable law and (z) the relevant Loan Party shall deliver to the Administrative Agent evidence of such payment as provided in *clause (d)* below.

In addition, each Loan Party agrees to pay any present or future stamp or documentary

taxes or any other excise or property taxes, charges or similar levies of the United States or any political subdivision thereof or any applicable foreign jurisdiction, and all liabilities with respect thereto, in each case arising from any payment made under any Loan Document or from the execution, delivery or registration of, or otherwise with respect to, any Loan Document (collectively, "Other Taxes").

Except as otherwise provided in *clauses (f), (g) and (h)* below, each Loan Party shall indemnify each Lender and the Administrative Agent for the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this *Section 2.13*) paid by such Lender or the Administrative Agent (as the case may be) and any liability (including for penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within 30 days from the date such Lender or the Administrative Agent (as the case may be) makes written demand therefor. Such written demand shall include a certificate setting forth in reasonable detail the type and amount of the indemnification payment to be made.

Within 30 days after the date of any payment of Taxes or Other Taxes, the Borrower shall furnish to the Administrative Agent, at its address referred to in *Section 12.8 (Notices, Etc.)*, the original or a certified copy of a receipt evidencing payment thereof.

Without prejudice to the survival of any other agreement of the Loan Party hereunder, the agreements and obligations of the Loan Party contained in this *Section 2.13* shall survive the payment in full of the Obligations, until 30 days after the expiration of the statute of limitations applicable to the collection from the relevant Lender or the Administrative Agent of the Taxes and Other Taxes to which the obligations under this *Section 2.13* relate.

Prior to the Closing Date in the case of each Non-U.S. Lender that is a signatory hereto, on the date of the Assignment and Acceptance pursuant to which it becomes a Lender in the case of each other Non-U.S. Lender and from time to time thereafter if requested by the Borrower or the Administrative Agent, each Non-U.S. Lender that is entitled at such time to an exemption from United States withholding tax, or that is subject to such tax at a reduced rate under an applicable tax treaty, shall provide the Administrative Agent and the Borrower with two completed originals of each of the following: (i) Form W-8ECI (claiming exemption from withholding because the income is effectively connected with a U.S. trade or business) (or any successor form), (ii) Form W-8BEN (claiming exemption from, or a reduction of, withholding tax under an income tax treaty) (or any successor form), (iii) in the case of a Non-U.S. Lender claiming exemption under clause (h) of Section 871 or clause (c) of Section 881 of the Internal Revenue Code, a Form W-8BEN (claiming exemption from withholding under the portfolio interest exemption)(or successor form) or (iv) any other applicable form, certificate or document prescribed by the IRS certifying as to such Non-U.S. Lender's entitlement to such exemption from United States withholding tax or reduced rate with respect to all payments to be made to such Non-U.S. Lender under the Loan Documents. Within a reasonable period following written request therefor from the Borrower, each Non-U.S. Lender (but only as long as such Non-U.S. Lender is able to do so pursuant to applicable Requirements of Law) shall provide to each of the Borrower and the Administrative Agent such additional Forms W-8BEN or W-8ECI (or any successor or other applicable form, certificate or document prescribed by the IRS) to the extent necessary as a result of any prior form expiring or becoming inaccurate or obsolete. Unless the Borrower and the Administrative Agent have received forms or other documents satisfactory to them indicating that payments under any Loan Document to or for a Non-U.S. Lender are not subject to United States withholding tax or are subject to

such tax at a rate reduced by an applicable tax treaty, the Borrower or the Administrative Agent shall withhold amounts required to be withheld by applicable Requirements of Law from such payments at the applicable statutory rate.

Each Lender (other than a Non-U.S. Lender) shall, on or prior to the date of its execution and delivery of this Agreement or, as the case may be, the applicable Assignment and Acceptance pursuant to which it becomes a Lender, provide to each of the Borrower and the Administrative Agent two completed original Forms W-9, unless such Lender notifies the Borrower and the Administrative Agent that it is an "exempt recipient", as defined in Treasury Regulations Section 1.6049-4(c) with respect to which no withholding is required. Within a reasonable period following written request therefor from the Borrower, each Lender (but only for so long as such Lender is able to do so pursuant to applicable Requirements of Law) will provide to each of the Borrower and the Administrative Agent additional original Forms W-9 or notification of "exempt recipient" status (or any successor or other applicable form, certificate or document prescribed by the IRS) to the extent necessary as a result of any prior form or notification expiring or becoming inaccurate or obsolete.

For any period with respect to which a Lender has failed to provide the Borrower or the Administrative Agent with the appropriate form or other document described in *clause (f)* or *(g)* above, as applicable (other than if such failure is due to a change in any applicable Requirement of Law occurring after the date on which a form originally was required to be provided, or if such form is not required under *clause (g)* above), such Lender shall not be entitled to indemnification under *clause (a)* or *(c)* above with respect to Taxes imposed by reason of such failure.

If any Lender or the Administrative Agent shall become aware that it is entitled to receive a refund in respect of Taxes or Other Taxes as to which it has received a payment from, or has been indemnified by, a Loan Party pursuant to this *Section 2.13*, it shall promptly notify the Borrower of such refund and shall, within 30 days after receipt of a request by the Borrower, apply for such refund at the sole cost and expense of the Loan Parties. If any Lender or the Administrative Agent receives a refund in respect of any Taxes or Other Taxes as to which it has received a payment from or has been indemnified by a Loan Party pursuant to this *Section 2.13*, it shall promptly notify the Borrower of such receipt and shall, within 30 days after the later of the receipt of a request by the Borrower or the receipt of such refund (unless such Lender reasonably expects that it shall be required to repay such refund to the relevant tax authority), pay the amount of such refund to the Borrower, net of all out-of-pocket expenses of such Lender, without interest thereon and subject to *Section 12.6 (Right of Set-off)*; *provided, however*, that the Borrower and each other Loan Party agree to return such refund to such Lender or the Administrative Agent promptly upon receipt of written notice in the event that such Lender or the Administrative Agent is required to repay such refund to the relevant tax authority. Nothing contained in this *Section 2.13* shall require any Lender or the Administrative Agent to make available to any Loan Party any tax return or any other document containing information that it deems to be confidential.

Any Lender claiming any additional amounts payable pursuant to this *Section 2.13* shall use its reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Applicable Lending Office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts that would be payable or may thereafter accrue and would not, in the sole determination of such Lender, be otherwise disadvantageous to such Lender.

Substitution of Lenders

In the event that (a) (i) the Borrower is required to make any payment pursuant to *Section 2.12 (Capital Adequacy)* or *Section 2.13 (Taxes)* that is attributable to any Lender or (ii) any Lender is a Non-Funding Lender and (b) Lenders holding at least 75% of the Total Commitment are not subject to such increased costs or illegality, payment or proceedings (any such Lender, an "*Affected Lender*"), the Borrower may substitute another financial institution for such Affected Lender hereunder, upon reasonable prior written notice (which written notice must be given within 90 days following the occurrence of any of the events described in *clause (a)*) by the Borrower to the Administrative Agent and the Affected Lender that the Borrower intends to make such substitution, which substitute financial institution must be an Eligible Assignee and, if not a Lender, reasonably acceptable to the Administrative Agent; *provided, however*, that, if more than one Lender claims increased costs, illegality or right to payment arising from the same act or condition and such claims are received by the Borrower within 30 days of each other, then the Borrower may substitute all, but not (except to the extent the Borrower has already substituted one of such Affected Lenders before the Borrower's receipt of the other Affected Lenders' claims) less than all, Lenders making such claims. In the event that the proposed substitute financial institution or other entity is reasonably acceptable to the Administrative Agent and the written notice was properly issued under this *Section 2.14*, the Affected Lender shall sell and the substitute financial institution or other entity shall purchase, pursuant to an Assignment and Acceptance, all rights and claims of such Affected Lender under the Loan Documents and the substitute financial institution or other entity shall assume, and the Affected Lender shall be relieved of, its Commitment and all other prior unperformed obligations of the Affected Lender under the Loan Documents (other than in respect of any damages (other than exemplary or punitive damages, to the extent permitted by applicable law) in respect of any such unperformed obligations). Upon the effectiveness of such sale, purchase and assumption (which, in any event shall be conditioned upon the payment in full by the Borrower to the Affected Lender in cash of all fees, unreimbursed costs and expenses and indemnities accrued and unpaid through such effective date), the substitute financial institution or other entity shall become a "*Lender*" hereunder for all purposes of this Agreement having a Commitment in the amount of such Affected Lender's Commitment assumed by it and such Commitment of the Affected Lender shall be terminated, provided that all indemnities under the Loan Documents shall continue in favor of such Affected Lender.

Conditions To Loans And Letters Of Credit

Conditions Precedent to Initial Loans and Letters of Credit

The obligation of each Lender to make the Loans requested to be made by it on the Closing Date and the obligation of each Issuer to issue Letters of Credit on the Closing Date is subject to the satisfaction (or due waiver in accordance with *Section 12.1 (Amendments, Waivers, Etc.)* of all of the following conditions precedent:

Bankruptcy Court Orders. The Bankruptcy Court shall have entered the Interim Order, the Cash Management Order and the Adequate Protection Stipulation, in each case in form and substance satisfactory to the Administrative Agent, and the Administrative Agent shall have received a copy of each such order or stipulation, in each case certified by the Clerk of the Bankruptcy Court as having been

duly entered, and each such order and stipulation shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed without the prior written consent of the Administrative Agent and the Requisite Lenders.

Plan of Reorganization. The Borrower and each Guarantor shall have filed a Plan of Reorganization in the Cases, in form and substance satisfactory to the Administrative Agent and each Lender.

Certain Documents. The Administrative Agent shall have received on the Closing Date each of the following, each dated the Closing Date unless otherwise indicated or agreed to by the Administrative Agent, in form and substance satisfactory to the Administrative Agent and each Lender and each of their respective counsel and in sufficient copies for each Lender:

this Agreement, duly executed and delivered by each of the Loan Parties and, for the account of each Lender requesting the same, a Note or Notes of the Borrower conforming to the requirements set forth herein;

the GAAP Memorandum;

the Interim Budget, together with all of the documents set forth on *Schedule III (Closing Financial Statements)* (the "*Closing Financial Statements*");

a report specifying the net intercompany obligations as of March 2, 2001, certified by a Responsible Officer to be true, correct and complete; and

Blocked Account Letters, duly executed by the appropriate Blocked Account Bank, with respect to the Concentration Account and such other deposit accounts of the Borrower and the Guarantors as the Administrative Agent may require;

favorable opinions of (A) Skadden, Arps, Slate, Meagher & Flom (LLP), counsel to the Loan Parties, in substantially the form of *Exhibit E (Form of Opinion of Skadden, Arps, Slate, Meagher & Flom LLP)* and (B) Richard Parry, Esq., counsel to the Loan Parties, in substantially the form of *Exhibit F (Form of Opinion of Richard Parry)*, each addressed to the Administrative Agent and the Lenders and addressing such other matters as any Lender through the Administrative Agent may reasonably request;

a copy of the articles or certificate of incorporation (or equivalent Constituent Document) of each Loan Party, certified as of a recent date by the Secretary of State of the state of organization of such Loan Party, together with certificates of such official attesting to the good standing of each such Loan Party in its jurisdiction of organization, as reasonably requested by the Administrative Agent;

a certificate of the Secretary or an Assistant Secretary of each Loan Party certifying (A) the names and true signatures of each officer of such Loan Party who has been authorized to execute and deliver any Loan Document or other document required hereunder to be executed and delivered by or on behalf of such Loan Party, (B) the by-laws (or equivalent Constituent Document) of such Loan Party as in effect on the date of such certification, (C) the resolutions of such Loan Party's Board of Directors (or equivalent governing body) approving and authorizing the execution, delivery and performance of

this Agreement and the other Loan Documents to which it is a party and (D) that there have been no changes in the certificate of incorporation (or equivalent Constituent Document) of such Loan Party from the certificate of incorporation (or equivalent Constituent Document) delivered pursuant to *subclause (vii)* above, as reasonably requested by the Administrative Agent;

a certificate of a Responsible Officer of the Borrower to the effect that the conditions set forth in *clause (b)* of *Section 3.2 (Conditions Precedent to Each Loan and Letter of Credit)* have been satisfied;

evidence satisfactory to the Administrative Agent that the insurance policies required by *Section 6.5 (Maintenance of Insurance)* are in full force and effect, together with the endorsements therefor requested by the Administrative Agent naming the Administrative Agent, on behalf of the Secured Parties, as an additional insured or loss payee;

a copy of all material contracts (including with respect of Material Projects and New Projects) to the extent reasonably requested by the Administrative Agent or its advisors prior to the Closing Date and all documents and agreements related thereto;

evidence reasonably satisfactory to the Administrative Agent of the receipt of the consents, authorizations and approvals, and the making of the filings, listed on *Schedule 4.2 (Consents)*; and

such other certificates, documents, agreements and information respecting any Loan Party as any Lender through the Administrative Agent may reasonably request.

Fee and Expenses Paid. There shall have been paid to the Administrative Agent, for the account of the Administrative Agent and the Lenders, as applicable, all fees and expenses (including reasonable fees and expenses of financial and legal advisors) due and payable on or before the Closing Date (including all such fees described in each Fee Letter).

Conditions Precedent to Each Loan and Letter of Credit

The obligation of each Lender on any date (including the Closing Date) to make any Loan and of each Issuer on any date (including the Closing Date) to issue any Letter of Credit is subject to the satisfaction of all of the following conditions precedent:

Request for Borrowing or Issuance of Letter of Credit. With respect to any Loan, the Administrative Agent shall have received a duly executed Notice of Borrowing and, with respect to any Letter of Credit, the Administrative Agent and the Issuer shall have received a duly executed Letter of Credit Request, dated on or before such date.

Representations and Warranties; No Defaults. The following statements shall be true on the Closing Date and on the date of such Loan or issuance of such Letter of Credit, both before and after giving effect thereto and, in the case of any Loan, to the application of the proceeds therefrom:

The representations and warranties set forth in *Article IV (Representations and Warranties)* and in the other Loan Documents shall be true and correct on and as of the Closing Date and

shall be true and correct in all material respects on and as of any such date after the Closing Date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date in which case, the representation and warranties were true and correct in all material respects as of such earlier date; and

no Default or Event of Default has occurred and is continuing.

No Legal Impediments. The making of the Loans or the issuance of such Letter of Credit on such date does not violate any Requirement of Law on the date of or immediately following such Loan or issuance of such Letter of Credit and is not enjoined, temporarily, preliminarily or permanently.

Final Order. From and after the forty-fifth (45th) day after the Closing Date, the Bankruptcy Court shall have entered the Final Order, certified by the Clerk of the Bankruptcy Court as having been duly entered, and the Final Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed without the prior written consent of the Administrative Agent and the Requisite Lenders.

Borrowing Certificate. The Administrative Agent shall have received a certificate executed by the chief financial officer of the Borrower or its designee, in form and substance satisfactory to the Administrative Agent, certifying that such chief financial officer or its designee is familiar with this Agreement and either (i) the requested Letter of Credit is used solely as set forth in *Section 4.12 (Use of Proceeds)* and in compliance with *Section 2.3 (Letters of Credit)* or (ii) the entire proceeds of the requested Borrowing are being used solely as set forth in *Section 4.12 (Use of Proceeds)*.

Additional Matters. The Administrative Agent shall have received such additional documents, information and materials as any Lender, through the Administrative Agent, may reasonably request.

Each submission by the Borrower to the Administrative Agent of a Notice of Borrowing and the acceptance by the Borrower of the proceeds of each Loan requested therein, and each submission by the Borrower to an Issuer of a Letter of Credit Request and the issuance of each Letter of Credit requested therein, shall be deemed to constitute a representation and warranty by the Borrower as to the matters specified in *clause (b) of Section 3.2 (Conditions Precedent to Each Loan and Letter of Credit)* on the date of the making of such Loan or the issuance of such Letter of Credit.

Representations and Warranties

To induce the Lenders, the Issuers and the Administrative Agent to enter into this Agreement, the Borrower represents and warrants as to itself and as to each other Loan Party, and each other Loan Party represents and warrants as to such Loan Party, to the Lenders, the Issuers and the Administrative Agent that, on and as of the Closing Date, after giving effect to the making of the Loans and other financial accommodations on the Closing Date and on and as of each date as required by *subclause (i) of clause (b) of Section 3.2 (Conditions Precedent to Each Loan and Letter of Credit)*.

Corporate Existence; Compliance with Law

Each of the Borrower and its Subsidiaries (a) is duly organized, validly existing and, except as set forth in *Schedule 4.1 (Corporate Existence)*, in good standing under the laws of the jurisdiction of its organization, (b) is duly qualified to do business as a foreign corporation and in good standing under the laws of each jurisdiction where such qualification is necessary, except where the failure to be so qualified or in good standing would not have a Material Adverse Effect in the aggregate, (c) has all requisite power and authority and the legal right to own, pledge, mortgage and operate its properties, to lease the property it operates under lease and to conduct its business as now or currently proposed to be conducted, (d) is in compliance with its Constituent Documents, (e) subject to the entry of the Orders, is in compliance with all applicable Requirements of Law, except where the failure to be in compliance would not have a Material Adverse Effect in the aggregate and (f) has all necessary licenses, permits, consents or approvals from or by, has made all necessary filings with, and has given all necessary notices to, each Governmental Authority having jurisdiction, to the extent required for such ownership, operation and conduct, except for licenses, permits, consents, approvals or filings that can be obtained or made by the taking of ministerial action to secure the grant or transfer thereof or the failure to obtain or make would not, in the aggregate, have a Material Adverse Effect.

Corporate Power; Authorization; Enforceable Obligations

The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party and the consummation of the transactions contemplated thereby, including the obtaining of the Loans and Letters of Credit and the creation and perfection of the Liens on the Collateral as security therefor:

are, subject to the entry of the Orders, within such Loan Party's corporate, limited liability company, partnership or other powers;

have been, or, at the time of delivery thereof pursuant to *Article III (Conditions To Loans And Letters Of Credit)* will have been, subject to the entry of the Orders, duly authorized by all necessary action, including the consent of shareholders, partners and members where required;

subject to the entry of the Orders, do not and will not (A) contravene such Loan Party's or any of its Subsidiaries' respective Constituent Documents, (B) violate any other Requirement of Law applicable to such Loan Party (including Regulations T, U and X of the Federal Reserve Board), or any order or decree of any Governmental Authority or arbitrator applicable to such Loan Party, (C) conflict with or result in the breach of, or constitute a default under, or result in or permit the termination or acceleration of, any Contractual Obligation of such Loan Party or any of its Subsidiaries except for any potential default caused by the granting of Liens on such Contractual Obligations pursuant to *Section 10.1 (Security)* or (D) result in the creation or imposition of any Lien upon any of the property of such Loan Party or any of its Subsidiaries, other than those in favor of the Secured Parties pursuant to this Agreement and the Orders; and

do not, subject to the entry of the Orders, require the consent of, authorization by, approval of, notice to, or filing or registration with, any Governmental Authority or any other Person, other than those listed on *Schedule 4.2 (Consents)* or that have been or will be, prior to the Closing Date, obtained or made, copies of which have been or will be delivered to the Administrative Agent pursuant to

Section 3.1 (Conditions Precedent to Initial Loans and Letters of Credit), and each of which on the Closing Date will be in full force and effect.

Upon the entry of the Orders, this Agreement shall have been, and each of the other Loan Documents will have been upon delivery thereof pursuant to the terms of this Agreement and upon the entry of the Orders, duly executed and delivered by each Loan Party party thereto. Subject to the entry of the Orders, this Agreement is, and the other Loan Documents will be, when delivered hereunder, the legal, valid and binding obligation of each Loan Party party thereto, enforceable against such Loan Party in accordance with its terms.

Ownership of Borrower; Subsidiaries

Set forth on *Schedule 4.3 (Ownership of Subsidiaries)* is a complete and accurate list showing, as of the Closing Date, all Subsidiaries of the Borrower and, as to each such Subsidiary, whether such Subsidiary is a Debtor Guarantor, the jurisdiction of its organization, the number of shares of each class of Stock authorized (if applicable), the number outstanding on the Closing Date and the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by the Borrower. No Stock of any Subsidiary of the Borrower is subject to any outstanding option, warrant, right of conversion or purchase or any similar right, except as set forth on *Schedule 4.3 (Ownership of Subsidiaries)*. All of the outstanding Stock of each Subsidiary of the Borrower listed on *Schedule 4.3 (Ownership of Subsidiaries)* has been validly issued, to the extent applicable is fully paid and non-assessable and is owned by the Borrower or a Subsidiary of the Borrower, free and clear of all Liens (other than the Prepetition Liens, the Lien in favor of the Secured Parties created pursuant to this Agreement and the Orders). Neither the Borrower nor any such Subsidiary is a party to, or has knowledge of, any agreement restricting the transfer or hypothecation of any Stock of any such Subsidiary, other than the Loan Documents other than those agreements that would not have a Material Adverse Effect in the aggregate. The Borrower does not own or hold, directly or indirectly, any Stock of any Person other than such Subsidiaries and Investments permitted by *Section 7.3 (Investments)*.

Financial Statements

The unaudited consolidated balance sheet of the Borrower and its Subsidiaries as at December 1, 2000, and the related consolidated statements of income, retained earnings and cash flows of the Borrower and its Subsidiaries for the fiscal year then ended, and the unaudited consolidated balance sheets of the Borrower and its Subsidiaries as at March 2, 2001 and the related consolidated statements of income, retained earnings and cash flows of the Borrower and its Subsidiaries for the three months then ended, copies of each of which have been furnished to each Lender, fairly present, subject, in the case of said balance sheets as at March 2, 2001 and such statements of income, retained earnings and cash flows for the three months then ended, to the absence of footnote disclosure and normal recurring year-end audit adjustments, the consolidated financial condition of the Borrower and its Subsidiaries as at such dates and the consolidated results of the operations of the Borrower and its Subsidiaries for the period ended on such dates, all in conformity with GAAP (except as set forth in the GAAP Memorandum).

As of the Closing Date and, thereafter, except as otherwise disclosed in writing to the Administrative Agent, neither the Borrower nor any of its Subsidiaries has any material obligation, contingent liability or liability for taxes, long-term leases or unusual forward or long-term commitment

not reflected in the Financial Statements referred to in *clause (a)* above or in the notes thereto and not otherwise permitted by this Agreement.

The Projections set forth in the Business Plan have been prepared by the Borrower in light of the past operations of its business, and reflect projections on a month by month basis for the Fiscal Year ending in 2002 and on a year by year basis for the Fiscal Years ending in 2003 and 2004. Such Projections are based upon estimates and assumptions stated therein, all of which the Borrower believes to be reasonable and fair in light of current conditions and current facts known to the Borrower and, as of the Closing Date, reflect the Borrower's good faith and reasonable estimates of the future financial performance of the Borrower and its Subsidiaries and of the other information projected therein for the periods set forth therein.

Material Adverse Change

Other than the filing of the Cases, since the Petition Date, there has been no Material Adverse Change and there have been no events or developments that have had a Material Adverse Effect in the aggregate.

Litigation

Other than the Cases and other than as set forth on *Schedule 4.6 (Litigation)*, there are no pending or, to the knowledge of the Borrower, threatened actions, investigations or proceedings affecting the Borrower or any of its Subsidiaries before any court, Governmental Authority or arbitrator other than those that in the aggregate have no reasonable risk of being determined adversely the Borrower and its Subsidiaries taken as a whole and, if so determined, would not have a Material Adverse Effect in the aggregate. The performance of any action by any Loan Party required or contemplated by any of the Loan Documents is not restrained or enjoined (either temporarily, preliminarily or permanently). The Raytheon Litigation constitutes all actions, litigation and arbitration to which any Loan Party, on the one hand, and Raytheon Company, Raytheon Engineers & Constructors International, Inc. or any Affiliate of either of them, on the other hand are party as of the Closing Date.

Taxes

All material federal, state, local and foreign income and franchise and other tax returns, reports and statements (collectively, the "*Tax Returns*") required to be filed by the Borrower or any of its Tax Affiliates have been filed with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed, all such Tax Returns are true and correct in all material respects, and all taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for non-payment thereof except where contested in good faith and by appropriate proceedings if adequate reserves therefor have been established on the books of the Borrower or such Tax Affiliate in conformity with GAAP and except for those the payment of which is excused or stayed as a result of the Cases. Except as set forth on *Schedule 4.7 (Taxes)*, no Tax Return is under audit or examination by any Governmental Authority and no notice of such an audit or examination or any assertion of any claim for Taxes has been given or made by any Governmental Authority. Proper and accurate amounts have been withheld by the Borrower and each of its Tax Affiliates from their respective employees for all periods in full and complete compliance with the tax, social security and unemployment withholding provisions of

applicable Requirements of Law and such withholdings have been timely paid to the respective Governmental Authorities.

Except as set forth on *Schedule 4.7 (Taxes)*, none of the Borrower or any of its Tax Affiliates has (i) executed or filed with the IRS or any other Governmental Authority any agreement or other document extending, or having the effect of extending, the period for the filing of any Tax Return or the assessment or collection of any charges, (ii) any obligation under any tax sharing agreement or arrangement other than that to which the Administrative Agent has a copy prior to the date hereof or (iii) been a member of an affiliated, combined or unitary group other than the group of which the Borrower (or its Tax Affiliate) is the common parent subsequent to being acquired by the Borrower.

Full Disclosure

The information prepared or furnished by or on behalf of any Loan Party by an authorized representative thereof in connection with this Agreement or the consummation of the financing taken as a whole, including the information contained in a Disclosure Document when filed, did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or herein not misleading at such time in light of the circumstances under which such information was provided or filed. All facts known to the Borrower and material to an understanding of the financial condition, business, properties or prospects of the Borrower and its Subsidiaries taken as one enterprise have been disclosed to the Lenders; *provided, however*, that, to the extent any such financial statement, certificate or other written information was based upon or constituted a forecast or projection, the Borrower represents only that it acted in good faith and utilized assumptions reasonable at the time made.

Margin Regulations

The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Federal Reserve Board), and no proceeds of any Borrowing will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock in contravention of Regulation T, U or X of the Federal Reserve Board.

No Burdensome Restrictions; No Defaults

Neither the Borrower nor any of its Subsidiaries (i) is a party to any Contractual Obligation entered into after the date hereof, the compliance with which would have a Material Adverse Effect in the aggregate or the performance of which by any thereof, either unconditionally or upon the happening of an event, would result in the creation of a Lien (other than a Lien permitted under *Section 7.2 (Liens, Etc.)*) on the property or assets of any thereof or (ii) is subject to any charter or corporate restriction that would have a Material Adverse Effect in the aggregate.

Except for those defaults occurring solely as a result of the filing of the Cases, neither the Borrower nor any of its Subsidiaries is in default under, or with respect to, any Contractual Obligation owed by it and, to the knowledge of the Borrower, no other party is in default under or with respect to any Contractual Obligation owed to any Loan Party or to any Subsidiary of a Loan Party, other than, in either case, those defaults that, in the aggregate, would not have a Material Adverse Effect since

the Petition Date.

No Default or Event of Default has occurred and is continuing.

To the best knowledge of the Borrower, there are no Requirements of Law applicable to any Loan Party or their respective Subsidiaries the compliance with which by such Loan Party have a Material Adverse Effect in the aggregate.

Investment Company Act; Public Utility Holding Company Act

Neither the Borrower nor any of its Subsidiaries is (a) an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended or (b) a "holding company," or an "affiliate" or a "holding company" or a "subsidiary company" of a "holding company," as each such term is defined and used in the Public Utility Holding Act of 1935, as amended.

Use of Proceeds

The proceeds of the Loans and the Letters of Credit, and the profits and distributions and funds from any Group or Division of any Loan Party, any Subsidiary of the Borrower and any joint venture or other Project, are being used solely as follows:

to fund post-petition operating expenses incurred in the ordinary course of business and set forth in the Budget;

to fund the Raytheon Litigation in accordance with the amounts set forth as a separate line item in the Budget;

to pay certain other costs and expenses of administration of the Cases to be specified in writing to the Administrative Agent (including by notice of application for Orders) as set forth in the Budget;

for working capital, capital expenditures and other general corporate purposes of the Borrower, the Guarantors and Permitted Joint Ventures not in contravention of any Requirement of Law or the Loan Documents and as set forth in the Budget; and

as long as no Default or Event of Default has occurred and is continuing, to pay certain Permitted Prepetition Claim Payments;

Notwithstanding the foregoing, no Loan Party or Permitted Joint Venture shall use the proceeds from any Loans or Letters of Credit or any profit, distribution or funds from the Borrower, any Subsidiary of the Borrower, any joint venture or other Project or any Group or Division of any Loan Party, for any purpose that is prohibited under the Bankruptcy Code or in connection with any of the following, and no other funding shall be provided, arranged by, or agreed to be provided for any following:

any item not set forth in the Budget;

any Excluded Project; *provided, however*, that proceeds of Loans in an amount not exceeding (A) in the case of the Red Oak Project, \$4,000,000 in the aggregate from the Closing Date until the Entry Date of the Final Order and (B) in the case of Illijan, \$3,000,000 in the aggregate at any time outstanding, may be used strictly in accordance with the Budget to fund payroll and other expenses incurred directly by the Borrower in connection with such Projects; [and provided, further, that funds not exceeding \$2,200,000 in the aggregate (but not proceeds of Loan) maintained by Washington International B.V. prior to the Closing Date may be utilized to fund wind down costs of the Hague office].

any joint venture that is successful in obtaining dissolution under bankruptcy law;

any other joint venture Project that is not a Permitted Joint Venture; or

the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the Administrative Agent, the Lenders, the Prepetition Lenders, including challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the Obligations or the Prepetition Obligations or the security interests and Liens of the Secured Parties or, as the case may be, the Prepetition Lenders in respect thereof.

The Borrower shall use the entire amount of the proceeds of each Loan and shall issue each Letter of Credit solely in accordance with this *Section 4.12 (Use of Proceeds)*; *provided, however*, that nothing herein shall in any way prejudice or prevent the Administrative Agent or the Lenders from objecting, for any reason, to any requests, motions or applications made in the Bankruptcy Court, including any applications for interim or final allowances of compensation for services rendered or reimbursement of expenses incurred under clause (a) of Section 105, or Section 330 or 331 of the Bankruptcy Code, by any party in interest.

Insurance

All policies of insurance of any kind or nature of the Borrower or any of its Subsidiaries, including policies of life, fire, theft, product liability, public liability, property damage, other casualty, employee fidelity, workers' compensation and employee health and welfare insurance, are in full force and effect and are of a nature and provide such coverage as is sufficient for, and as is customarily carried by, businesses of the size and character of such Person.

Labor Matters

There are no strikes, work stoppages, slowdowns or lockouts pending or threatened against or involving the Borrower or any of its Subsidiaries, other than those that would have a Material Adverse Effect in the aggregate.

There are no unfair labor practices, grievances or complaints pending, or, to the Borrower's knowledge, threatened against or involving the Borrower or any of its Subsidiaries, nor are there any arbitrations or grievances threatened involving the Borrower or any of its Subsidiaries, other than those that, if resolved adversely to the Borrower or such Subsidiary, would have a Material Adverse Effect in the aggregate.

Except as set forth on *Schedule 4.14 (Labor Matters)*, as of the Closing Date, there is no collective bargaining agreement covering any of the employees of the Borrower or its Subsidiaries.

Schedule 4.14 (Labor Matters) sets forth as of the Closing Date, all material consulting agreements, executive employment agreements, executive compensation plans, deferred compensation agreements, employee stock purchase and stock option plans and severance plans of the Borrower and any of its Subsidiaries.

ERISA

Schedule 4.15 (List of Plans) separately identifies as of the date hereof all Title IV Plans, all Multiemployer Plans and all of the employee benefit plans within the meaning of clause (3) of Section 3 of ERISA to which any Loan Party or any ERISA Affiliate has any obligation or liability, contingent or otherwise.

Each employee benefit plan of any Loan Party or any ERISA Affiliate intended to qualify under Section 401 of the Internal Revenue Code does so qualify, and any trust created thereunder is exempt from tax under the provisions of Section 501 of the Internal Revenue Code, except where such failures would have a Material Adverse Effect in the aggregate.

Each Title IV Plan is in compliance in all material respects with applicable provisions of ERISA, the Internal Revenue Code and other Requirements of Law except for non-compliances that would have a Material Adverse Effect in the aggregate.

Other than the Cases, there has been no, nor is there reasonably expected to occur, any ERISA Event other than those that would have a Material Adverse Effect in the aggregate.

No Loan Party and no ERISA Affiliate would have any Withdrawal Liability as a result of a complete withdrawal as of the date hereof from any Multiemployer Plan.

Environmental Matters

Except as set forth on *Schedule 4.16 (Environmental Matters)*:

The operations of the Borrower and each of its Subsidiaries have been and are in compliance with all Environmental Laws, including obtaining and complying with all required environmental, health and safety Permits, other than non-compliances that in the aggregate (i) have no reasonable likelihood of the Borrower and its Subsidiaries incurring Environmental Liabilities and Costs in excess of \$7,000,000 and (ii) would not have a Material Adverse Effect in the aggregate.

None of the Borrower or any of its Subsidiaries or any Real Property currently or, to the knowledge of the Borrower, previously owned, operated or leased by or for the Borrower or any of its Subsidiaries is subject to any pending or, to the knowledge of the Borrower, threatened, claim, order, agreement, notice of violation, notice of potential liability or is the subject of any pending or threatened proceeding or governmental investigation under or pursuant to Environmental Laws other than those that in the aggregate (i) have no reasonable likelihood of the Borrower and its Subsidiaries incurring Environmental Liabilities and Costs in excess of \$7,000,000 and (ii) would not have a Material Adverse Effect in the aggregate.

None of the Borrower or any of its Subsidiaries is a treatment, storage or disposal facility requiring a Permit under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the regulations thereunder or any state analog.

There are no facts, circumstances or conditions arising out of or relating to the operations or ownership of real property owned, operated or leased by the Borrower or any of its Subsidiaries that are not specifically included in the financial information furnished to the Lenders other than those that, in the aggregate, (i) have no reasonable likelihood of the Borrower and its Subsidiaries incurring Environmental Liabilities and Costs in excess of \$5,000,000 and (ii) could not reasonably be expected to have a Material Adverse Affect.

As of the date hereof, no Environmental Lien has attached to any property of the Borrower or any of its Subsidiaries and, to the knowledge of the Borrower, no facts, circumstances or conditions exist that could reasonably be expected to result in any such Lien attaching to any such property.

Intellectual Property

The Borrower and its Subsidiaries own or license or otherwise have the right to use all Material Intellectual Property rights that are necessary for the operations of their respective businesses (including all trade names associated with any private label brands of the Borrower or any of its Subsidiaries) without infringement upon or conflict with the rights of any other Person with respect thereto that are known to any Loan Party or that would have a Material Adverse Effect in the aggregate. To the Borrower's knowledge, no slogan or other advertising device, product, process, method, substance, part or component, or other material now employed, or now contemplated to be employed, by the Borrower or any of its Subsidiaries infringes upon or conflicts with any rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or threatened, in each case that would have a Material Adverse Effect in the aggregate.

Title; Real Property

Other than as a result of the Cases, each of the Borrower and its Subsidiaries has good and marketable title to, or valid leasehold interests in, all Real Property and good title to all personal property purported to be owned by it, including those reflected on the most recent Financial Statements delivered by the Borrower, and none of such properties and assets is subject to any Lien, except Liens permitted under *Section 7.2 (Liens, Etc.)*. The Borrower and its Subsidiaries have received all deeds, assignments, waivers, consents, non-disturbance and recognition or similar agreements, bills of sale and other documents in respect of, and have duly effected all recordings, filings and other actions necessary to establish, protect and perfect, the Borrower's and its Subsidiaries' right, title and interest in and to all such property.

Set forth on *Schedule 4.18 (Real Property)* is a complete and accurate list of all Real Property owned or leased by each Loan Party as of the Closing Date with a Fair Market Value in excess of \$100,000 showing, as of the Closing Date, the street address, county (or other relevant jurisdiction or state) and the record owner thereof.

No portion of any Real Property owned or leased by any Loan Party or any of its

Subsidiaries has suffered any material damage by fire or other casualty loss that has not heretofore been completely repaired and restored to its original condition and that would have a Material Adverse Effect in the aggregate. No portion of any Real Property owned or leased by any Loan Party or any of its Subsidiaries is located in a special flood hazard area as designated by any federal Governmental Authority other than as would not have a Material Adverse Effect in the aggregate.

All Permits required to have been issued or appropriate to enable all real property owned or leased by the Borrower or any of its Subsidiaries to be lawfully occupied and used for all of the purposes for which they are currently occupied and used have been lawfully issued and are in full force and effect, other than those that would not have a Material Adverse Effect in the aggregate.

None of the Borrower or any of its Subsidiaries has received any notice, or has any knowledge, of any pending, threatened or contemplated condemnation proceeding affecting any Real Property owned or leased by the Borrower or any of its Subsidiaries or any part thereof, except for those that would not have a Material Adverse Effect in the aggregate.

Secured, Super Priority Obligations

On and after the Closing Date, the provisions of the Loan Documents and the Orders are effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, legal, valid and perfected Liens on and security interests (having the priority provided for herein and in the Orders) in all right, title and interest in the Collateral, enforceable against each Loan Party that owns an interest in such Collateral.

Pursuant to the Orders, all Obligations will be secured by valid and perfected liens and security interests subject to the Requisite Priority.

Pursuant to clause (c) of Section 364 of the Bankruptcy Code and the Orders, all obligations of the Borrower and the obligations of the Debtor Guarantors under the Guaranty in respect thereof (including any exposure of a Lender in respect of cash management or hedging transactions incurred on behalf of any Loan Party) at all times shall constitute allowed super-priority administrative expense claims in each of the Cases having priority over all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code, subject only to the Carve-Out.

The Orders and the transactions contemplated hereby and thereby, are in full force and effect and have not been vacated, reversed, modified, amended or stayed without the prior written consent of the Administrative Agent.

Deposit Accounts; Control Accounts

The only deposit accounts, Securities Accounts or commodity accounts maintained by any Grantor on the date hereof are those listed on *Schedule 4.20 (Deposit Accounts and Control Accounts)*, which sets forth such information separately for each Grantor.

Title; No Other Liens

Except for the Lien granted to the Administrative Agent pursuant to this Agreement,

each Grantor is the record and beneficial owner of the Pledged Collateral pledged by it hereunder constituting Instruments or certificated securities and is the entitlement holder of all such Pledged Collateral c

onstituting Investment Property held in a Securities Account and owns each other item of Collateral in which a Lien is granted by it hereunder.

Pledged Collateral

The Pledged Stock, Pledged Partnership Interests and Pledged LLC Interests pledged hereunder by each Grantor constitutes that percentage of the issued and outstanding equity of all classes of each issuer thereof as set forth on *Schedule 4.22 (Pledged Collateral)*.

All of the Pledged Stock, Pledged Partnership Interests and Pledged LLC Interests have been duly and validly issued and, to the extent applicable, are fully paid and nonassessable.

Each of the Pledged Notes constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at law).

All Pledged Stock, Pledged Partnership Interests and Pledged LLC Interests of such Grantor as of the date hereof are listed on *Schedule 4.22 (Pledged Collateral)*.

All Pledged Collateral consisting of certificated securities or Instruments has been delivered to the Administrative Agent to the extent requested by the Administrative Agent.

All Pledged Collateral held by a Securities Intermediary in a Securities Account is in a Control Account to the extent requested by the Administrative Agent.

Intellectual Property

Schedule 4.23 (Material Intellectual Property) lists all Material Intellectual Property of each Grantor on the date hereof. The Material Intellectual Property set forth on *Schedule 4.23* for such Grantor constitutes all of the intellectual property rights material to its business.

On the date hereof, all Material Intellectual Property owned by such Grantor is valid, subsisting, unexpired and enforceable, has not been adjudged invalid and has not been abandoned and the use thereof in the business of such Grantor does not infringe the intellectual property rights of any other Person except for those infringements that are not known to such Grantor and that, in the aggregate, would not have a Material Adverse Effect in the aggregate.

Except as set forth in *Schedule 4.23*, on the date hereof, none of the Material Intellectual Property owned by such Grantor is the subject of any licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor.

No holding, decision or judgment has been rendered by any Governmental Authority

against any Grantor (or otherwise to such Grantors' best knowledge) that would limit, cancel or question the validity of, or such Grantor's rights in, any Material Intellectual Property.

No action or proceeding seeking to limit, cancel or question the validity of any Material Intellectual Property owned by such Grantor or such Grantor's ownership interest therein is on the date hereof pending or, to the knowledge of such Grantor, threatened. There are no claims, judgments or settlements to be paid by such Grantor relating to the Material Intellectual Property.

Reporting Covenants

As long as any of the Obligations or Commitments remain outstanding, unless the Requisite Lenders otherwise consent in writing, the Borrower agrees with the Lenders and the Administrative Agent that:

Financial Statements

The Borrower shall furnish to the Administrative Agent (with sufficient copies for each of the Lenders) the following:

(i) Within 15 days of the date hereof, a listing of the outstanding balance of all intercompany Obligations (including Obligations owing from the Borrower, its Subsidiaries and any affiliate of any of them to the Borrower, its Subsidiaries and affiliates of any of them) as of March 2, 2001, certified by a Responsible Officer to be true, correct and complete and (ii) within 30 days of the date hereof, a listing of such outstanding balances as of the Petition Date, certified by a Responsible Officer to be true, complete and correct.

Weekly Reports. On the third Business Day of each calendar week, (i) a cash report reflecting aggregate cash balances in all accounts of the Borrower and its Subsidiaries with financial and other institutions as of the end of the previous calendar week and a variance analysis comparing the actual cash balances to the balance projected in the latest Quarter Projection and (ii) a certificate of the chief financial officer of the Borrower and each Group confirming compliance by the Borrower and each such Group (as the case may be) with *Section 6.9 (Application of Proceeds)* and *Section 7.21 (Expenses Within Budget)* including a summary of the daily receipts and disbursements and a reconciliation of budget amounts with actual income and expenses by legal entity.

Monthly Reports.

On the last Business Day of each calendar month, a cash flow projection for the next succeeding 13-week period (the "*Quarter Projection*").

Within 30 days after the end of each fiscal month in each Fiscal Year, the financial reports set forth in *section (b)(ii) of Schedule IV (Financial Reporting)* for the Borrower and its Subsidiaries, together with financial information regarding the Borrower and its Subsidiaries consisting of consolidated unaudited balance sheets as of the close of such month and the related statements of income and cash flows for such month and that portion of the current Fiscal Year ending as of the close

of such month, setting forth in comparative form the figures for the corresponding period in the prior year and the figures contained in the Budget and the Projections for the current Fiscal Year, in each case certified by a Responsible Officer of the Borrower as fairly presenting the consolidated financial position of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments and including certain other exceptions set forth in the GAAP Memorandum).

Within 45 days after the end of each fiscal month in each Fiscal Year, the financial information set forth in *section (b)(iii) of Schedule IV (Financial Reporting)* for each Group and Division of the Borrower and its Subsidiaries and each corporate center thereof, financial information regarding the Borrower, its Subsidiaries and each Group, Division and corporate center thereof consisting of consolidating unaudited balance sheets as of the close of such month (set forth for each Group but not for each Division and corporate center thereof) and the related statements of income and cash flow for such month and that portion of the current Fiscal Year ending as of the close of such month, setting forth in comparative form the figures for the corresponding period in the prior year and the figures contained in the Budget and the Projections for the current Fiscal Year, in each case certified by a Responsible Officer of the Borrower as fairly presenting the consolidating financial position of the Borrower, its Subsidiaries, and each Group, Division and corporate center thereof as at the dates indicated and the results of their operations and cash flow for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments (subject to the absence of footnote disclosure and normal year-end audit adjustments and including certain other exceptions set forth in the GAAP Memorandum).

Quarterly Reports. Within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, commencing with the Fiscal Quarter ending June 1, 2001, financial information regarding the Borrower and its Subsidiaries consisting of consolidated and consolidating unaudited balance sheets as of the close of such quarter and the related statements of income and cash flow for such quarter and that portion of the Fiscal Year ending as of the close of such quarter, setting forth in comparative form the figures for the corresponding period in the prior year and the figures contained in the Budget and the Projections for the current Fiscal Year, in each case certified by a Responsible Officer of the Borrower as fairly presenting the consolidated and consolidating financial position of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments and with certain other exceptions set forth in the GAAP Memorandum).

Annual Reports. Within 90 days after the end of each Fiscal Year, financial information regarding the Borrower and its Subsidiaries consisting of consolidated and consolidating balance sheets of the Borrower and its Subsidiaries as of the end of such year and related statements of income and cash flows of the Borrower and its Subsidiaries for such Fiscal Year, all prepared in conformity with GAAP (except as set forth in the GAAP Memorandum) and certified, in the case of such consolidated financial statements, without qualification as to the scope of the audit by an independent public accountants of recognized national standing acceptable to the Administrative Agent, together with the report of such accounting firm stating that (i) such financial statements fairly present the consolidated financial position of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in conformity with GAAP (except as set forth in the GAAP Memorandum)

applied on a basis consistent with prior years (except for changes with which such independent certified public accountants shall concur and that shall have been disclosed in the notes to the financial statements) and (ii) the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards and accompanied by a certificate stating that in the course of the regular audit of the business of the Borrower and its Subsidiaries such accounting firm has obtained no knowledge that a Default or Event of Default has occurred and is continuing, or, if in the opinion of such accounting firm, a Default or Event of Default has occurred and is continuing, a statement as to the nature thereof.

Management Letters, Etc. Within five Business Days after receipt thereof by any Loan Party, copies of each management letter, exception report or similar letter or report received by such Loan Party from its independent certified public accountants;

Intercompany Loan Balances. Together with each delivery of any financial statement pursuant to *clause (c)* of this *Section 5.1*, a summary of outstanding intercompany, certified by a Responsible Officer, and in the form (and with the same level of specificity) as the report to be delivered to the Administrative Agent pursuant to *clause (a)* above.

Executive Review Committee. On or before receipt of the same by the executive review committee of the Borrower, any document (including any application, notification of intent to bid, memorandum and any supporting document) presented to such executive review committee after the Closing Date for the bid or approval of any Project, subject to reasonable provisions for maintenance of client confidential information and compliance with governmental security procedures.

Final Budget and Business Plan

As soon as practicable, and in any event within 30 days of the Closing Date, the Borrower shall provide to the Administrative Agent a Final Budget, in form and substance satisfactory to the Administrative Agent and the Supermajority Lenders.

As soon as practicable, and in any event within 60 days of the Closing Date, the Borrower shall provide to the Administrative Agent a Business Plan, in form and substance satisfactory to the Administrative Agent and the Supermajority Lenders.

Default Notices

As soon as practicable, and in any event within five Business Days after a Responsible Officer of any Loan Party has actual knowledge of the existence of any Default, Event of Default or other event that has had a Material Adverse Effect or that has any reasonable likelihood of causing or resulting in a Material Adverse Change, the Borrower shall give the Administrative Agent notice specifying the nature of such Default or Event of Default or other event, including the anticipated effect thereof, which notice, if given by telephone, shall be promptly confirmed in writing on the next Business Day.

Litigation

Promptly after the commencement thereof, the Borrower shall give the Administrative Agent written notice of the commencement of all actions, suits and proceedings before any domestic or

foreign Governmental Authority or arbitrator, affecting the Borrower or any of its Subsidiaries, that (i) seeks injunctive or similar relief, (ii) in the reasonable judgment of the Borrower, exposes the Borrower or such Subsidiary to liability in an amount aggregating \$1,000,000 or more or that, if adversely determined, would have a Material Adverse Effect.

Asset Sales

Prior to any Asset Sale anticipated to generate in excess of \$5,000,000 (or its Dollar Equivalent) in Net Cash Proceeds, the Borrower shall send the Administrative Agent a notice (a) describing such Asset Sale or the nature and material terms and conditions of such transaction and (b) stating the estimated Net Cash Proceeds anticipated to be received by the Borrower or any of its Subsidiaries.

SEC Filings; Press Releases

Promptly after the sending or filing thereof, the Borrower shall send the Administrative Agent copies of (a) all reports that the Borrower sends to its security holders generally, (b) all reports and registration statements that the Borrower or any of its Subsidiaries files with the Securities and Exchange Commission or any national or foreign securities exchange, (c) all press releases and (d) all other statements concerning material changes or developments in the business of such Loan Party made available by any Loan Party to the public.

Labor Relations

Promptly after any Responsible Officer of the Borrower becoming aware of the same, the Borrower shall give the Administrative Agent written notice of (a) any material labor dispute to which the Borrower or any of its Subsidiaries is or may become a party, including any strikes, lockouts or other disputes relating to any of such Person's plants and other facilities and (b) any Worker Adjustment and Retraining Notification Act or related liability incurred with respect to the closing of any plant or other facility of any of such Person, which, in either case, would have a Material Adverse Effect.

Tax Returns

Upon the reasonable request of any Lender, through the Administrative Agent, the Borrower shall provide copies of all federal, state, local and foreign tax returns and reports filed by the Borrower or any of its Subsidiaries in respect of taxes measured by income (excluding sales, use and like taxes).

Insurance

As soon as is practicable and in any event within 90 days after the end of each Fiscal Year, the Borrower shall furnish the Administrative Agent (in sufficient copies for each of the Lenders) with (a) a report in form and substance reasonably satisfactory to the Administrative Agent and the Lenders outlining all material insurance coverage maintained as of the date of such report by the Borrower and its Subsidiaries and the duration of such coverage and (b) an insurance broker's statement that all premiums then due and payable with respect to such coverage have been paid.

ERISA Matters

The Borrower shall furnish the Administrative Agent (with sufficient copies for each of the Lenders):

promptly and in any event within 30 days after any Loan Party or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred;

promptly and in any event within 10 days after any Loan Party or any ERISA Affiliate knows or has reason to know that a request for a minimum funding waiver under Section 412 of the Internal Revenue Code has been filed with respect to any Title IV Plan or Multiemployer Plan, a written statement of a Responsible Officer of the Borrower describing such ERISA Event or waiver request and the action, if any, that the Loan Parties and ERISA Affiliates propose to take with respect thereto and a copy of any notice filed with the PBGC or the IRS pertaining thereto;

simultaneously with the date that any Loan Party or any ERISA Affiliate files a notice of intent to terminate any Title IV Plan, if such termination would require material additional contributions in order to be considered a standard termination within the meaning of clause (b) of Section 4041 of ERISA, a copy of each notice.

Environmental Matters

Except with respect to liabilities disclosed in its Disclosure Documents, the Borrower shall provide the Administrative Agent promptly and in any event within 10 days of the Borrower or any Loan Party learning of any of the following, written notice of any of the following:

that any Loan Party is or may be liable to any Person as a result of a Release or threatened Release that could reasonably be expected to subject such Loan Party to Environmental Liabilities and Costs of \$7,000,000 or more or would have a Material Adverse Effect in the aggregate;

the receipt by any Loan Party of notification that any real or personal property of such Loan Party is or is reasonably likely to be subject to any Environmental Lien;

the receipt by any Loan Party of any notice of violation of or potential liability under, or knowledge by such Loan Party that there exists a condition that could reasonably be expected to result in a violation of or liability under any Environmental Law, except for violations and liabilities the consequence of which in the aggregate would have no reasonable likelihood of subjecting the Loan Parties collectively to Environmental Liabilities and Costs of \$7,000,000 or more and would not otherwise have a Material Adverse Effect in the aggregate;

the commencement of any judicial or administrative proceeding or investigation alleging a violation of or liability under any Environmental Law, that, in the aggregate, if adversely determined, would have a reasonable likelihood of subjecting the Loan Parties collectively to Environmental Liabilities and Costs of \$7,000,000 or more or would otherwise have a Material Adverse Effect in the aggregate;

any proposed acquisition of stock, assets or real estate, or any proposed leasing of property, or any other action by any Loan Party or any of its Subsidiaries other than those the

consequences of which in the aggregate have reasonable likelihood of subjecting the Loan Parties collectively to Environmental Liabilities and Costs of \$7,000,000 or less or would not otherwise have a Material Adverse Effect in the aggregate;

any proposed action by any Loan Party or any of its Subsidiaries or any proposed change in Environmental Laws that, in the aggregate, have a reasonable likelihood of requiring the Loan Parties to obtain additional environmental, health or safety Permits or make additional capital improvements to obtain compliance with Environmental Laws that in the aggregate would cost \$7,000,000 or more, would subject the Loan Parties to additional Environmental Liabilities and Costs of \$7,000,000 or more or would otherwise have a Material Adverse Effect in the aggregate; and

upon written request by any Lender through the Administrative Agent, a report providing an update of the status of any environmental, health or safety compliance, hazard or liability issue identified in any notice or report delivered pursuant to this Agreement.

Bankruptcy Court

The Borrower shall use its best efforts to obtain the approval of the Bankruptcy Court of this Agreement and the other Loan Documents and deliver or cause to be delivered to the Administrative Agent and the Administrative Agent's counsel all material pleadings, motions and other documents filed on behalf of all of the Loan Parties with the Bankruptcy Court.

The Borrower shall use its best efforts to ensure the following occurs: (i) a disclosure statement in the Cases shall be filed with the Bankruptcy Court on or before June 15, 2001, (ii) an order approving the adequacy of such disclosure statement and otherwise finding such disclosure statement in compliance with 11 U.S.C. § 1125 shall be entered in the Cases on or before July 16, 2001, (iii) an order of the Bankruptcy Court shall be entered on or before September 17, 2001 confirming the Plan of Reorganization or (iv) the Plan of Reorganization shall become effective on or before October 1, 2001.

Other Information

The Borrower shall provide the Administrative Agent or any Lender with such other information respecting the business, properties, condition, financial or otherwise, or operations of the Borrower or any of its Subsidiaries as any Lender through the Administrative Agent may from time to time reasonably request.

Affirmative Covenants

As long as the Obligations or the Commitments remain outstanding, unless the Requisite Lenders otherwise consent in writing, each Loan Party agrees with the Lenders and the Administrative Agent that:

Preservation of Corporate Existence, Etc.

Such Loan Party shall, and shall cause each of its Subsidiaries to, preserve and maintain

its legal existence, rights (charter and statutory) and franchises necessary or desirable in the normal conduct of its business, except as permitted by *Sections 7.3 (Investments)* and *7.4 (Sale of Assets)* and except if, in the reasonable business judgment of such Loan Party, it is in its best economic interest not to preserve and maintain such existence (with respect to any Subsidiary), rights, privileges, qualifications, permits, licenses and franchises, and such failure to preserve the same would not have in the aggregate a Material Adverse Effect.

Compliance with Laws, Etc.

Such Loan Party shall, and shall cause each of its Subsidiaries to, comply with all applicable Requirements of Law, Contractual Obligations and Permits, except where the failure so to comply would not have a Material Adverse Effect in the aggregate.

Conduct of Business

Such Loan Party shall, and shall cause each of its Subsidiaries to, (a) conduct its business in the ordinary course consistent with past practice and (b) use its reasonable efforts, in the ordinary course and consistent with past practice, to preserve its business and the goodwill and business of the customers, advertisers, suppliers and others having business relations with such Loan Party or any of its Subsidiaries, except in each case where the failure to comply with the covenants in each of *clauses (a)* and *(b)* above would not have a Material Adverse Effect in the aggregate; *provided, however*, that each Loan Party shall use its best efforts to renegotiate the Contractual Obligations relating to the Boeing EELV Cape and Burlington Train 3 Projects.

Payment of Taxes, Etc.

Such Loan Party shall, and shall cause each of its Subsidiaries to, pay and discharge before the same shall become delinquent, all lawful governmental claims, taxes, assessments, charges and levies arising after the Petition Date, except where contested in good faith, by proper proceedings and adequate reserves therefor have been established on the books of such Loan Party or the appropriate Subsidiary in conformity with GAAP.

Maintenance of Insurance

Such Loan Party shall (i) maintain, and cause to be maintained by or for each of its Subsidiaries, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which such Loan Party or such Subsidiary operates, such other insurance as may be reasonably requested by the Requisite Lenders and, in any event, all insurance required by any Loan Document and (ii) cause all blanket general and excess liability and casualty insurance of each Loan Party (together with other insurance as may reasonably be requested by the Administrative Agent) to name the Administrative Agent on behalf of the Secured Parties as additional insured or loss payee, as appropriate, and to provide that no cancellation, material addition in amount or material change in coverage shall be effective until after 30 days' written notice thereof to the Administrative Agent.

Access

Such Loan Party shall from time to time during normal business hours permit the Administrative Agent and the Lenders, or any agents or representatives thereof, within two Business Days after written notification of the same (except that during the continuance of an Event of Default, no such notice shall be required) to (a) examine and make copies of and abstracts from the financial records and books of account of such Loan Party and each of its Subsidiaries, (b) visit the properties of such Loan Party and each of its Subsidiaries, (c) discuss the affairs, finances and accounts of such Loan Party and each of its Subsidiaries with any of the officers or directors of such Loan Parties who are employed by any Loan Party or any Affiliate thereof and (d) communicate directly and discuss the affairs, finances and accounts of such Loan Party and each of its Subsidiaries with any other party in interest to the Cases, as lessor under any Contractual Obligation or Lease to which any other party in interest to the Cases, as lessor under any Contract Lease to which any Loan Party or its Subsidiaries, the Committee or otherwise. Such Loan Party shall authorize its independent certified public accountants to disclose to the Administrative Agent or any Lender any and all financial statements and other information of any kind, as the Administrative Agent or any Lender reasonably requests from the Borrower or such Loan Party and that such accountants may have with respect to the business, financial condition, results of operations or other affairs of such Loan Party or any of its Subsidiaries.

Keeping of Books

Such Loan Party shall, and shall cause each of its Subsidiaries to, keep proper books of record and account, in which full and correct entries shall be made in conformity with GAAP of all financial transactions and the assets and business of such Loan Party and each such Subsidiary.

Maintenance of Properties, Etc.

Except as otherwise required by the Bankruptcy Code, such Loan Party shall, and shall cause each of its Subsidiaries to, maintain and preserve (a) all of its properties necessary in the conduct of its business in good working order and condition, (b) all rights, permits, licenses, approvals and privileges (including all Permits) used, useful or necessary in the conduct of its business and (c) all Intellectual Property with respect to its business that is used or necessary in the conduct of its business, except if, in the reasonable business judgment of such Loan Party, it is in its best economic interest not to maintain and preserve each of the foregoing and such failure to maintain and preserve would not have a Material Adverse Effect in the aggregate.

Application of Proceeds

The Borrower shall use the entire amount of the proceeds of the Loans as provided in Section 4.12 (*Use of Proceeds*).

Environmental

Except as otherwise required by the Bankruptcy Code or by a Final Order of the Bankruptcy Court, such Loan Party shall, and shall cause any Subsidiary to, comply in all material respects with Environmental Laws and, without limiting the foregoing, such Loan Party shall, at its sole cost and expense, upon receipt of any notification or otherwise obtaining knowledge of any Release or other event that has any reasonable likelihood of such Loan Party and its Subsidiaries incurring Environmental Liabilities and Costs in excess of \$7,000,000 or that would have a Material Adverse

Effect in the aggregate, (a) conduct, or pay for consultants to conduct, tests or assessments of environmental conditions at such operations or properties, including the investigation and testing of subsurface conditions and (b) take such Remedial Action, investigational or other action as required by Environmental Laws or as any Governmental Authority requires or as is appropriate and consistent with good business practice to address the Release or event.

Control Accounts; Blocked Accounts

All proceeds of any Account and deposits in any account maintained with any financial institution (other than the Permitted Balance Accounts), whether by the Borrower, any Debtor Guarantor, any other Loan Party or any Subsidiary thereof (other than a Permitted Joint Venture), shall be transferred daily to the Concentration Account in accordance with the Cash Management Order, and the funds in such Concentration Account shall, in turn, be applied in full daily to repay the Obligations and provide cash collateral for the Letters of Credit as provided in *clause (b) of Section 2.8 (Mandatory Prepayments)* or, *clause (f) of Section 2.11 (Payments and Computations)*, as the case may be, subject to the provisions of the Cash Management Order.

In the event (i) any Loan Party or any Approved Securities Intermediary or Blocked Account Bank shall, after the date hereof, terminate an agreement with respect to the maintenance of a Control Account or Blocked Account for any reason, (ii) the Administrative Agent shall demand such termination as a result of the failure of an Approved Securities Intermediary or Blocked Account Bank to comply with the terms of the applicable Control Account Letter or Blocked Account Letter or (iii) the Administrative Agent determines in its sole discretion that the financial condition of an Approved Securities Intermediary or Blocked Account Bank, as the case may be, has materially deteriorated, such Loan Party agrees to notify all of its obligors that were making payments to such terminated Control Account or Blocked Account, as the case may be, to make all future payments to another Control Account or Blocked Account, as the case may be.

Negative Covenants

As long as any of the Obligations or the Commitments remain outstanding, without the written consent of the Requisite Lenders, each Loan Party agrees with the Lenders and the Administrative Agent that:

Indebtedness

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, directly or indirectly create, incur, assume or otherwise become or remain directly or indirectly liable with respect to any Indebtedness or Guaranty Obligations, except:

the Obligations;

Indebtedness of the Borrower and its Subsidiaries existing on the date hereof and not prohibited under the Prepetition Credit Agreement or set forth on Schedule 7.1;

(i) Guaranty Obligations incurred by the Borrower or any Guarantor in respect of Indebtedness of the Borrower or any Guarantor otherwise permitted by this *Section 7.1 (Indebtedness)* (other than *clause Error! Reference source not found.*) and (ii) Guaranty Obligations incurred by the Borrower or any of its Subsidiaries otherwise permitted under *clause (e)* of *Section 7.3 (Investments)*;

Capital Lease Obligations and purchase money Indebtedness incurred by such Loan Party or a Subsidiary of such Loan Party after the Petition Date to finance the acquisition of fixed assets in an aggregate outstanding principal amount not to exceed \$5,000,000 at any time; *provided, however*, that the Capital Expenditure related thereto is otherwise expressly permitted by the Budget when made;

Renewals, extensions, refinancings and refundings of Indebtedness permitted by *clause (d)* above; *provided, however*, that any such renewal, extension, refinancing or refunding is in an aggregate principal amount not greater than the principal amount of the Indebtedness being renewed, extended, refinanced or refunded;

Indebtedness arising from intercompany loans (i) from the Borrower to any Guarantor or from any Guarantor to the Borrower or any other Guarantor and (ii) from a Subsidiary that is not a Guarantor to the Borrower or a Guarantor; *provided, however*, that such Subsidiary subordinates such intercompany loan to the prior payment in full of the Obligations on terms acceptable to the Administrative Agent in its sole and absolute discretion; and

Indebtedness arising under any performance, bid or surety bond or completion guarantee entered into in the ordinary course of business.

Liens, Etc.

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, create or suffer to exist, any Lien upon or with respect to any of its properties or assets, whether now owned or hereafter acquired, or assign, or permit any of its Subsidiaries to assign, any right to receive income, except for:

Liens created pursuant to the Loan Documents;

Liens existing on the date hereof and not prohibited under the Prepetition Credit Agreement;

Customary Permitted Liens of the Borrower and its Subsidiaries;

purchase money security interests in real property, improvements thereto or equipment (including any item of equipment purchased in connection with a particular construction Project that the Borrower or a Subsidiary expects to sell to its customer with respect to such Project and that, pending such sale, is classified as inventory) hereafter acquired (or, in the case of improvements, constructed) by the Borrower or any of its Subsidiaries; *provided, however*, that (i) such security interests secure Indebtedness permitted by *clause (d)* of *Section 7.1 (Indebtedness)*, (ii) such security interests are incurred, and the Indebtedness secured thereby is created, within 180 days of such acquisition or construction, (iii) the Indebtedness secured thereby does not exceed the lesser of the cost or Fair Market Value of such real property, improvements or equipment at the time of such acquisition or construction and (iv) such security interests do not apply to any other property or assets of any Loan Party;

Liens granted by such Loan Party or any Subsidiary of such Loan Party (including the interest of a lessor under a Capital Lease and Liens to which any property is subject at the time of such Loan Party's or such Subsidiary's acquisition thereof) securing Indebtedness permitted under *clause (d)* of *Section 7.1 (Indebtedness)* and limited in each case to the property purchased with the proceeds of such purchase money Indebtedness or subject to such Capital Lease;

any Lien securing the renewal, extension, refinancing or refunding of any Indebtedness secured by any Lien permitted by *clause (d)* above without any change in the assets subject to such Lien;

Liens in favor of lessors securing operating leases permitted hereunder; and

Liens in respect of Capital Lease Obligations permitted under *Section 7.1 (Indebtedness)*.

Investments

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, directly or indirectly make or maintain any Investment except:

Investments existing on the date of this Agreement and disclosed on *Schedule 7.3 (Existing Investments)*;

Cash Equivalents with respect to which the Administrative Agent for the benefit of the Secured Parties has a perfected Lien with Requisite Priority;

Accounts, Contractual Obligations and Chattel Paper, notes receivable and similar items arising or acquired in the ordinary course of business consistent with the past practice of such Loan Party and its Subsidiaries;

Investments received in settlement of amounts due to such Loan Party or any Subsidiary of such Loan Party effected in the ordinary course of business;

Investments by (i) the Borrower in any Guarantor, or by any Guarantor in the Borrower or any other Guarantor, (ii) a Subsidiary that is not a Guarantor in the Borrower or any other Subsidiary and (iii) the Borrower or any Guarantor in a Permitted Joint Venture or another Subsidiary that is not a Guarantor; *provided, however*, that the aggregate outstanding amount of such Investments pursuant to this *subclause (iii)* shall not exceed the amounts specifically set forth in the Budget therefor at such time;

loans or advances to employees of such Loan Party or any of its Subsidiaries (but not to Dennis Washington) in the ordinary course of business; *provided, however*, that (i) the aggregate outstanding principal amount of such loans and advances does not exceed \$1,000,000 in the aggregate and (ii) the proceeds of such loans are used solely for the relocation expenses of such employee; and

direct or indirect ordinary course of business investments in, and Guaranty Obligations in respect of the obligations of, Permitted Joint Ventures engaged in an Eligible Line of Business and loans to such Permitted Joint Ventures.

Sale of Assets

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, sell, convey, transfer, lease or otherwise dispose of, any of its assets or any interest therein (including the sale or factoring at maturity or collection of any accounts) to any Person, or permit or suffer any other Person to acquire any interest in any of its assets or, in the case of any Subsidiary, issue or sell any shares of such Subsidiary's Stock or Stock Equivalent (any such disposition being an "*Asset Sale*"), except:

the sale or disposition of inventory in the ordinary course of business;

transfers resulting from a Property Loss Event so long as the Proceeds are applied in the manner specified in *clause (a) of Section 2.6 (Evidence of Debt)*;

the sale or disposition of equipment that is no longer used, has become obsolete, damaged or is replaced in the ordinary course of business; *provided, however*, that the aggregate Fair Market Value of all such equipment disposed of in any Fiscal Year shall not exceed \$10,000,000; and *provided, further*, that the Net Cash Proceeds of such sale or disposition are applied to repay the Obligations or cash collateralize Letters of Credit as provided in *clause (b) of Section 2.8 (Mandatory Prepayments)*;

the sale or disposition of the electro-mechanical division of Westinghouse Government Services, Inc. and certain of the assets of the Petroleum and Chemicals Group located in the United States, as set forth in the Budget, to the extent the Net Cash Proceeds thereof set forth in separate line items therefor in the Budget are received and only if such Net Cash Proceeds are applied to repay the Obligations or cash collateralize Letters of Credit as provided in *clause (b) of Section 2.8 (Mandatory Prepayments)*;

the sale or disposition of assets of any Permitted Joint Venture that does not constitute, in the aggregate, all or a material part of the assets of such Permitted Joint Venture either at such time or as of the date hereof; and *provided, further*, that the Net Cash Proceeds of such sale or disposition are applied to repay the Obligations or cash collateralize Letters of Credit as provided in *clause (b) of Section 2.8 (Mandatory Prepayments)* unless the distribution of such Net Cash Proceeds is not permitted by the applicable joint venture agreement, in which case no such repayment shall be required for so long as such prohibition remains in effect;

the lease or sublease of real property not constituting a sale and leaseback, to the extent not otherwise prohibited by this Agreement;

assignments and licenses of intellectual property of the Borrower and its Subsidiaries in the ordinary course of business;

discounts, adjustments, settlements and compromises of Accounts and contract claims in the ordinary course of business and in accordance with generally accepted practices in the industry; and

the sale or disposition of any other asset of any Subsidiary of the Borrower that is not a Debtor Guarantor in an amount not to exceed \$100,000 in the aggregate for all such sales and dispositions;

provided, however, that the foregoing limitations are not intended to prevent such Loan

Party from rejecting unexpired leases or executory contracts pursuant to Section 365 of the Bankruptcy Code in connection with the Cases.

Restricted Payments

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Payment except Restricted Payments (i) by any Subsidiary of the Borrower to the Borrower or any Guarantor, (ii) by the Borrower to any Guarantor, (iii) by any Permitted Joint Venture to any Subsidiary or to other direct or indirect holders of equity interests in such Permitted Joint Venture (but only to the extent such Restricted Payments are made *pro rata* among the holders of the equity interests in such Permitted Joint Venture or otherwise pursuant to the terms of the joint venture agreement relating to such Permitted Joint Venture as in existence as of the date hereof or any new joint venture agreement) and (iv) by any Debtor Guarantor, to the extent approved by the Bankruptcy Court; and

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make any payments to vendors or suppliers on account of any pre-petition Claim without the prior written consent of the Requisite Lenders except, in respect of any Debtor Guarantor, to the extent approved by the Bankruptcy Court.

Restriction on Fundamental Changes

Such Loan Party shall not, and shall not permit any of its Subsidiaries to (a) merge or consolidate with any Person (except that the Borrower or any Wholly-Owned Subsidiary thereof that is a Loan Party may merge into or consolidate with the Borrower or any other Loan Party (other than Raytheon Infrastructure, Inc.)), (b) acquire all or substantially all of the Stock or Stock Equivalents of any Person, (c) acquire all or substantially all of the assets of any Person or all or substantially all of the assets constituting the business of a division, branch or other unit operation of any Person, (d) enter into any joint venture or partnership with any Person (other than any other Loan Party) other than for Permitted Joint Ventures or (e) acquire or create any Subsidiary other than any Loan Party and Permitted Joint Ventures.

Change in Nature of Business

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, make any material change in the nature or conduct of its business as carried on at the date hereof.

Transactions with Affiliates

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, except as otherwise expressly permitted under *clauses (i) and (ii)* below, do any of the following: (a) make any Investment in an Affiliate of the Borrower that is not the Borrower or a Subsidiary thereof, (b) transfer, sell, lease, assign or otherwise dispose of any asset to any Affiliate of the Borrower that is not the Borrower or any Subsidiary thereof, (c) merge into or consolidate with or purchase or acquire assets from any Affiliate of the Borrower that is not the Borrower or any Subsidiary thereof, (d) repay any Indebtedness to any Affiliate of the Borrower that is not the Borrower or any Subsidiary thereof or (e) enter into any other transaction (including any retention bonus or other compensation) directly or

indirectly with or for the benefit of any Affiliate of the Borrower that is not the Borrower or any Subsidiary thereof (including guaranties and assumptions of obligations of any such Affiliate), except for (i) transactions in the ordinary course of business on a basis no less favorable to such Loan Party or its Subsidiary as would be obtained in a comparable arm's length transaction with a Person not an Affiliate and (ii) salaries and other employee compensation to officers or directors of the Borrower or its Subsidiaries commensurate with current compensation levels.

Restrictions on Subsidiary Distributions; No New Negative Pledge

Other than pursuant to the Loan Documents and any agreements governing any purchase money Indebtedness or Capital Lease Obligations permitted by *clause (d) or (e) of Section 7.1 (Indebtedness)* (in which latter case, any prohibition or limitation shall only be effective against the assets financed thereby), such Loan Party shall not, and shall not permit any of its Subsidiaries to, (a) enter into or agree to enter into any consensual encumbrance or restriction of any kind on the ability of such Subsidiary to pay dividends or make any other distribution or transfer of funds or assets or make loans or advances to or other Investments in, or pay any Indebtedness owed to, the Borrower or any other Subsidiary of the Borrower (other than restrictions to which joint ventures are subject) or (b) enter into or agree to enter into any Contractual Obligation prohibiting or limiting the ability of the Borrower or any Subsidiary of the Borrower to create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, to secure the Obligations, including any agreement requiring other Indebtedness or Contractual Obligation to be equally and ratably secured with the Obligations.

Ownership of the Westinghouse Subsidiaries

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, permit any Westinghouse Subsidiary to (a) engage in any business that is not directly related to the business conducted by the Westinghouse Subsidiaries on the Closing Date and consistent with past practices or (b) incur and permit to remain outstanding any Indebtedness in an amount in excess of the amount of Indebtedness it could incur and have outstanding as of the Closing Date pursuant to the Economic Rights Agreement, dated as of March 19, 1999, the Amended and Restated Limited Liability Company Agreement of Westinghouse Government Services Company, LLC, dated as of March 19, 1999 and the Amended and Restated Limited Liability Company Agreement of Westinghouse Government Environmental Services Company, LLC, dated as of March 19, 1999. The ownership interest of the Borrower in the Westinghouse Subsidiaries shall equal or exceed 60% at all times.

Modification of Constituent Documents

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, change its capital structure (including in the terms of its outstanding Stock) or otherwise amend its Constituent Documents, except for changes and amendments not materially adversely affecting the rights and privileges of such Loan Party or any of its Subsidiaries, or the interests of the Administrative Agent, the Lenders and the Issuers under the Loan Documents or in the Collateral.

Accounting Changes; Fiscal Year

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, change its

(a) accounting treatment and reporting practices or tax reporting treatment, except as required by GAAP or any Requirement of Law and disclosed to the Lenders and the Administrative Agent or (b) Fiscal Year.

Margin Regulations

The Borrower shall not use all or any portion of the proceeds of any credit extended hereunder to purchase or carry margin stock within the meaning of Regulations T, U and X of the Federal Reserve System.

Operating Leases; Sale/Leasebacks

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, become or remain liable as lessee or guarantor or other surety with respect to any operating lease, unless that aggregate amount of all rents paid or accrued under all such operating leases shall not exceed \$100,000,000 in any Fiscal Year.

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, enter into any sale and leaseback transaction.

No Speculative Transactions

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, engage in any speculative transaction or in any transaction involving Hedging Contracts, except as required by *Section 6.11 (Control Accounts; Blocked Accounts)* or for the sole purpose of hedging in the normal course of business and consistent with industry practices.

Compliance with ERISA

Such Loan Party shall not, shall not permit any of its Subsidiaries to, and shall not cause or permit any ERISA Affiliate to, cause or permit to occur (a) an event that could result in the imposition of a Lien under Section 412 of the Internal Revenue Code or Section 302 or 4068 of ERISA or (b) an ERISA Event (other than the Cases) that would have a Material Adverse Effect in the aggregate.

Environmental

Except as set forth on *Schedule 7.17 (Environmental)*, such Loan Party shall not, and shall not permit any of its Subsidiaries to, allow a Release of any Contaminant in violation of any Environmental Law; *provided, however*, that such Loan Party shall not be deemed in violation of this *Section 7.17 (Environmental)*, if, as the consequence of all such Releases, such Loan Party would not incur Environmental Liabilities and Costs in excess of \$7,000,000 in the aggregate, to the extent such Environmental Liabilities and Costs would not have a Material Adverse Effect in the aggregate.

Chapter 11 Claims

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, incur, create, assume, suffer to exist or permit any administrative expense, unsecured claim, or other super-priority claim or lien that is *pari passu* with or senior to the claims of the Secured Parties against the Loan Parties

hereunder, or apply to the Bankruptcy Court for authority to do so, except for the Carve-Out.

The Orders

Such Loan Party shall not, and shall not permit any of its Subsidiaries to, make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to either Order or any First Day Orders without the prior written consent of the Supermajority Lenders.

Employment Expenses

The Borrower shall not, and shall not permit any of its Subsidiaries to, pay to any officer, director or employee any employment wages, salary, bonus or other compensation of any type or character that is not consistent with past practices other than retention or severance pay approved as part of the Business Plan by the Bankruptcy Court, as otherwise approved by the Bankruptcy Court or otherwise approved in writing by the Requisite Lenders.

Expenses Within Budget

The Borrower shall not, and shall not permit any of its Subsidiaries to, incur any expenses other than as set forth in the Budget, or enter into any Contractual Obligation to incur any such expenses prior to the Termination Date.

The Administrative Agent, in consultation with HATCH, may make any verification it reasonably deems appropriate to be satisfied that the proceeds of the requested Borrowing are being used solely for the Loan Parties' reasonable and necessary expenditures as set forth in the Budget. Neither the Administrative Agent nor HATCH shall be under any obligation conduct such verification.

Payment Over of Red Oak Proceeds

Each Loan Party that receives payment of any amount in respect of the Red Oak Project or from AES Red Oak L.L.C. or any of its Affiliates in excess of the amounts required to complete such Project shall deposit such amounts to a Cash Collateral Account to repay the Obligations in the order set forth in *clause (b) of Section 2.8 (Mandatory Prepayments)*.

Events Of Default

Events of Default

Each of the following events shall be an Event of Default:

The Borrower shall fail to pay any principal of any Loan or any Reimbursement Obligation when the same becomes due and payable; or

The Borrower shall fail to pay any interest on any Loan, any fee under any of the Loan

Documents or any other Obligation (other than one referred to in *clause (a)* above) and such non-payment continues for a period of three Business Days after the due date therefor; or

any representation or warranty made or deemed made by any Loan Party in any Loan Document or by any Loan Party (or any of its officers) in connection with any Loan Document shall prove to have been incorrect in any material respect when made or deemed made; or

any Loan Party shall fail to perform or observe (i) any term, covenant or agreement contained in *Section 5.3 (Default Notices)*, *clause (b)* of *Section 5.12 (Bankruptcy Court)*, *Section 6.1 (Preservation of Corporate Existence, Etc.)*, *Section 6.6 (Access)*, *Section 6.9 (Application of Proceeds)*, *Section 6.11 (Control Accounts; Blocked Accounts)*, *Article VII (Negative Covenants)*, (ii) any term, covenant or agreement contained in *clause (b)* of *Section 5.1 (Financial Statements)*, if such failure remains unremedied for 1 Business Day, (iii) any term, covenant or agreement contained in *Section 5.1 (Financial Statements)* (other than *clause (b)* thereof), *Section 9.8 (Additional Guarantors)* or *Article X (Security)* if such failure remains unremedied for 5 Business Days or (iv) any other term, covenant or agreement contained in this Agreement or in any other Loan Document if such failure under this *subclause (iv)* shall remain unremedied for 30 days after the earlier of the date on which (A) a Responsible Officer of the Borrower becomes aware of such failure or (B) written notice thereof shall have been given to the Borrower by the Administrative Agent or any Lender; or

(i) the Borrower or any of its Subsidiaries shall fail to make any payment on any Indebtedness arising after the Petition Date (other than the Obligations) of the Borrower or any such Subsidiary (or any Guaranty Obligation) having a principal amount of \$1,000,000 or more, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), (ii) any other event shall occur or condition shall exist under any agreement or instrument relating to any such Indebtedness, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness or (iii) any such Indebtedness shall become or be declared to be due and payable, or required to be prepaid or repurchased (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

The Loan Documents and the Orders shall, for any reason, cease to create a valid Lien on any of the Collateral purported to be covered thereby or such Lien shall cease to be a perfected Lien having the priority provided herein pursuant to Section 364 of the Bankruptcy Code against each Loan Party, or any Loan Party shall so allege in any pleading filed in any court or any material provision of any Loan Document shall, for any reason, cease to be valid and binding on each Loan Party party thereto or any Loan Party shall so state in writing; or

one or more final, non-appealable judgments or orders (or other similar process) giving rise to post-Petition Date liability in an aggregate amount exceeding \$5,000,000 to the extent not covered by insurance, shall be rendered against one or more of any Loan Party and its Subsidiaries and shall remain unpaid and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 20 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

an ERISA Event (other than the Cases) shall occur and the amount of all liabilities and deficiencies resulting therefrom, whether or not assessed, exceeds \$1,000,000 in the aggregate; or

Any of the Cases shall be dismissed (or the Bankruptcy Court shall make a ruling requiring the dismissal of the Cases), suspended or converted to a case under chapter 7 of the Bankruptcy Code, or any Loan Party shall file any pleading requesting any such relief; or an application shall be filed by any Loan Party for the approval of, or there shall arise, (i) any other Claim having priority senior to or *pari passu* with the claims of the Administrative Agent and the Lenders under the Loan Documents or any other claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code (other than the Carve-Out) or (ii) any Lien on the Collateral having a priority senior to or *pari passu* with the Liens and security interests granted herein, except as expressly provided herein; or

Any Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter, an order (i) approving payment of any prepetition Claim other than a Permitted Prepetition Claim Payment, (ii) approving a First Day Order not approved by the Administrative Agent, (iii) granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of \$1,000,000 in the aggregate or (iv) except to the extent the same would not constitute a Default under any of the previous clauses, approving any settlement or other stipulation with any creditor of any Loan Party, other than the Administrative Agent and the Lenders, or otherwise providing for payments as adequate protection or otherwise to such creditor individually or in the aggregate in excess of \$100,000 for any and all such creditors; or

(i) The Interim Order shall cease to be in full force and effect and the Final Order shall not have been entered prior to such cessation, (ii) the Final Order shall not have been entered by the Bankruptcy Court on or before the forty-fifth (45th) day following the Closing Date, (iii) from and after the date of entry thereof, the Final Order shall cease to be in full force and effect, (iv) any Loan Party shall fail to comply with the terms of the Interim Order or the Final Order in any material respect or (v) the Interim Order or the Final Order shall be amended, supplemented, stayed, reversed, vacated or otherwise modified (or any of the Loan Parties shall apply for authority to do so) without the written consent of the Requisite Lenders; or

The Bankruptcy Court shall enter an order appointing a responsible officer or an examiner with powers beyond the duty to investigate and report, as set forth in subclauses (3) and (4) of clause (a) of Section 1106 of the Bankruptcy Code, in any of the Cases; or

there shall not occur any of the following: (i) a disclosure statement in the Cases shall be filed with the Bankruptcy Court on or before June 15, 2001, (ii) an order shall be entered on or before July 16, 2001 finding that the disclosure statement contains adequate information and otherwise complies with 11 U.S.C. § 1125, (iii) an order of the Bankruptcy Court shall be entered on or before September 17, 2001 confirming the Plan of Reorganization or (iv) the Plan of Reorganization shall become effective on or before October 1, 2001; or

the period of exclusivity in the Cases terminates or exclusivity is otherwise lifted in the Cases; or

there shall occur a Material Adverse Change or any event or circumstances (or series of events or circumstances) that would have a Material Adverse Effect in the aggregate since the Petition Date; or

the proceeds of the requested Borrowing are not being used solely for as provided in Section 4.12 hereof; or

one or more of the Borrower and its Subsidiaries shall have entered into one or more consent or settlement decrees or agreements or similar arrangements with a Governmental Authority or one or more judgments, orders, decrees or similar actions shall have been entered against one or more of the Borrower and its Subsidiaries based on or arising from the violation of or pursuant to any Environmental Law, or the generation, storage, transportation, treatment, disposal or Release of any Contaminant and, in connection with all the foregoing, the Borrower and its Subsidiaries are likely to incur Environmental Liabilities and Costs in excess of \$7,000,000 in the aggregate or that would have a Material Adverse Effect.

Remedies

During the continuance of any Event of Default, without further order of, application to, or action by, the Bankruptcy Court, the Administrative Agent (a) may, and shall at the request of the Requisite Lenders, by notice to the Borrower declare that all or any portion of the Commitments be terminated, whereupon any and all obligations of each Lender to make any Loan shall immediately terminate and (b) may, and shall at the request of the Requisite Lenders, by notice to the Borrower, declare the Loans, all interest thereon and all other amounts and Obligations payable under this Agreement to be forthwith due and payable, whereupon the Loans, all such interest and all such amounts and Obligations shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower. In addition, subject solely to any requirement of the giving of notice by the terms of the Interim Order or the Final Order, the automatic stay provided in Section 362 of the Bankruptcy Code shall be deemed automatically vacated without further action or order of the Bankruptcy Court, and the Administrative Agent and the Lenders shall be entitled to exercise all of their respective rights and remedies under the Loan Documents, including all rights and remedies with respect to the Collateral and the Guarantors.

Actions in Respect of Letters of Credit

Upon the Termination Date or as may be required by *clause (b) or (d) of Section 2.8 (Mandatory Prepayments)*, the Borrower shall pay to the Administrative Agent in immediately available funds at the Administrative Agent's office referred to in *Section 12.8 (Notices, Etc.)*, for deposit in a Cash Collateral Account, an amount equal to 105% of the sum of all outstanding Letter of Credit Obligations. The Administrative Agent may, from time to time after funds are deposited in any Cash Collateral Account, apply funds then held in such Cash Collateral Account to the payment of any amounts, in accordance with *clause (f) of Section 2.11 (Payments and Computations)*, as shall have become or shall become due and payable by the Borrower to the Issuers or the Lenders in respect of the Letter of Credit Obligations. The Administrative Agent shall promptly give written notice of any such application; *provided, however*, that the failure to give such written notice shall not invalidate any such application.

Guaranty

The Guaranty

In order to induce the Lenders to enter into this Agreement and to extend credit hereunder and in recognition of the direct benefits to be received by each Guarantor from the proceeds of the Loans and the issuance of the Letters of Credit, each Guarantor hereby agrees with the Administrative Agent and the Lenders that such Guarantor hereby unconditionally and irrevocably, jointly and severally, guarantees as primary obligor and not merely as surety the full and prompt payment and performance when due, whether upon maturity, by acceleration or otherwise, of any and all of the Obligations of the Borrower to the Lenders. If any or all of the Obligations of the Borrower to the Lenders become due and payable hereunder, each Guarantor, jointly and severally, unconditionally promises to pay and perform such Obligations to the Lenders, or order, on demand, together with any and all reasonable expenses that may be incurred by the Administrative Agent or the Lenders in collecting any of the Obligations.

Nature of Liability

The liability of each Guarantor hereunder is exclusive and independent of any security for or other guaranty of the Obligations of the Borrower whether executed by such Guarantor, any other Guarantor, any other guarantor or by any other party, and the liability of each Guarantor hereunder shall not be affected or impaired by (a) any direction as to application of payment by the Borrower or by any other party, (b) any other continuing or other guaranty, undertaking or maximum liability of a guarantor or of any other party as to the Obligations of the Borrower, (c) any payment on or in reduction of any such other guaranty or undertaking, (d) any dissolution, termination or increase, decrease or change in personnel by the Borrower or (e) any payment made to the Administrative Agent or the Lenders in respect the Obligations and that the Administrative Agent or such Lenders repay to the Borrower pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and each Guarantor hereby waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding.

Independent Obligation

The obligations of each Guarantor hereunder are independent of the obligations of any other Guarantor, any other guarantor or the Borrower, and a separate action or actions may be brought and prosecuted against each Guarantor, whether or not action is brought against any other Guarantor, any other guarantor or the Borrower and whether or not any other Guarantor, any other guarantor or the Borrower be joined in any such action or actions. Each Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof. Any payment by the Borrower or other circumstance operating to toll any statute of limitations as to the Borrower shall operate to toll the statute of limitations as to the Guarantor.

Authorization

Each Guarantor authorizes the Administrative Agent and the Lenders without notice or demand (except as shall be required by applicable statute and cannot be waived), and without affecting or impairing its liability hereunder, from time to time to do any of the following:

change the manner, place or terms of payment of, or change or extend the time of payment of, renew, increase, accelerate or alter, any of the Obligations (including any increase or

decrease in the rate of interest thereon), any security therefor, or any liability incurred directly or indirectly in respect thereof, and the Guaranty herein made shall apply to the Obligations as so changed, extended, renewed or altered;

take and hold security for the payment of the Obligations and sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Obligations or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and any offset there against;

exercise or refrain from exercising any rights against the Borrower or others or otherwise act or refrain from acting;

release or substitute any one or more endorsers, guarantors, the Borrower or other obligors;

settle or compromise any of the Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, or subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of the Borrower to its creditors;

apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of the Borrower to the Lenders regardless of what liability or liabilities of such Guarantor or the Borrower remain unpaid; or

consent to or waive any breach of, or any act, omission or default under, this Agreement or any of the instruments or agreements referred to herein, or otherwise amend, modify or supplement this Agreement or any of such other instruments or agreements.

Subordination

Any of the Indebtedness of the Borrower now or hereafter owing to any Guarantor is hereby subordinated to the Obligations of the Borrower; *provided, however*, that payment may be made by the Borrower on any such Indebtedness owing to such Guarantor so long as the same is not prohibited by this Agreement. Prior to the transfer by any Guarantor of any note or negotiable instrument evidencing any of the Indebtedness of the Borrower to such Guarantor, such Guarantor shall mark such note or negotiable instrument with a legend that the same is subject to this subordination.

Waiver

Each Guarantor waives any right (except as shall be required by applicable statute and cannot be waived) to require the Administrative Agent or the Lenders to (i) proceed against the Borrower, any other Guarantor, any other guarantor or any other party, (ii) proceed against or exhaust any security held from the Borrower, any other Guarantor, any other guarantor or any other party or (iii) pursue any other remedy in the Administrative Agent's or the Lenders' power whatsoever. Each Guarantor waives (except as shall be required by applicable statute and cannot be waived) any defense based on or arising out of any defense of the Borrower, any other Guarantor, any other guarantor or any other party other than payment in full of the Obligations, including any defense based on or arising out of

the disability of the Borrower, any other Guarantor, any other guarantor or any other party, or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Borrower other than payment in full of the Obligations. Subject to the giving of five (5) Business Days prior written notice in accordance with the Orders, the Administrative Agent and the Lenders may, at their election, foreclose on any security held by the Administrative Agent or the Lenders by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent such sale is permitted by applicable law), and, to the extent permitted under applicable Requirements of Law, may exercise any other right or remedy the Administrative Agent and the Lenders may have against the Borrower, any other guarantor, any other party or any security, without affecting or impairing in any way the liability of any Guarantor hereunder, in each case except to the extent the Obligations have been paid. Each Guarantor hereby waives any defense arising out of any such election by the Administrative Agent and the Lenders, even though such election operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against the Borrower, any other party or any security.

Each Guarantor waives all presentments, demands for performance, protests and notices, including notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Guaranty and notices of the existence, creation or incurring of new or additional Obligations. Each Guarantor (i) assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder and (ii) agrees that the Administrative Agent and the Lenders shall have no duty to advise such Guarantor of information known to them regarding such circumstances or risks.

Limitation on Enforcement

The Lenders agree that this Guaranty may be enforced only by the action of the Administrative Agent acting upon the instructions of the Requisite Lenders, and that no Lender shall have any right individually to seek to enforce or to enforce this Guaranty, it being understood and agreed that such rights and remedies may be exercised by the Administrative Agent for the benefit of the Lenders upon the terms of this Agreement.

Additional Guarantors

Within 15 Business Days of the Closing Date, each Subsidiary of the Borrower (other than any Permitted Joint Venture) that is not a Guarantor as of the Closing Date shall become a Guarantor hereunder; *provided, however*, that (i) no Subsidiary of the Borrower incorporated outside of the United States shall be required to give any Guaranty hereunder if (A) such Guaranty would violate any law applicable to such Subsidiary or (B) such Subsidiary or its directors or officers are advised by local legal counsel selected by such Subsidiary, and approved by the Administrative Agent that giving such Guaranty could result in personal liability to the directors and officers of such Subsidiary or (ii) the Requisite Lenders may, in their sole discretion but in consultation with the Borrower, determine, that the expense, tax or regulatory consequences or difficulty of obtaining such Guaranty from such Subsidiary would not, in light of the benefits to accrue to the Lenders, justify such Subsidiary becoming a Guarantor hereunder.

Within 15 Business Days of any Subsidiary becoming a Guarantor hereunder after the

Closing Date, each Loan Party shall deliver such documents and do all further actions necessary to ensure that the Administrative Agent receives for the benefit of the Secured Parties a valid and perfected lien and security interest (or the reasonable equivalent thereof) as set forth under *Article X (Security)* with the Requisite Priority in all assets of such Subsidiary constituting Collateral, including a pledge of all Stock owned and Pledged Notes held by such Subsidiary; *provided, however*, that the Requisite Lenders may, in their sole discretion but in consultation with the Borrower, determine, that the expense, tax or regulatory consequences or difficulty of obtaining such liens and security interests from such Subsidiary would not, in light of the benefits to accrue to the Lenders, justify such Subsidiary granting such liens and security interests hereunder.

The Borrower agrees that, if, pursuant to this *Section 9.8*, any Loan Party shall be required to cause any Subsidiary that is not a Guarantor to become a Guarantor hereunder, or if for any reason the Borrower desires any such Subsidiary to become a Guarantor hereunder, such Subsidiary shall execute and deliver to the Administrative Agent a Guaranty Supplement in substantially the form of *Exhibit O (Form of Guaranty Supplement)* (and authorizes the Administrative Agent to attach each such Guaranty Supplement to this Agreement and supplement *Schedule V (Guarantors)* to include such Subsidiary therein) and shall thereafter for all purposes be a party hereto and have the same rights, benefits and obligations as a Guarantor party hereto on the Closing Date.

To the extent not delivered to the Administrative Agent on or before 30 days after the Closing Date, at any time thereafter and from time to time, each Loan Party agrees promptly to (i) execute and deliver to the Administrative Agent such Pledge Amendments (in substantially the form of *Exhibit N (Form of Pledge Amendment)*), Guaranty Supplements (in substantially the form of *Exhibit O (Form of Guaranty Supplement)*) and other amendments to this Agreement as the Administrative Agent or the Requisite Lenders deems necessary or advisable in order to grant to the Administrative Agent, for the benefit of the Secured Parties, a valid, perfected security interest with the Requisite Priority in the Stock, Stock Equivalents, Pledged Notes and other debt Securities of any Subsidiary (in each case to the extent it constitutes or would constitute Collateral) that are owned by the Borrower or any of its Subsidiaries and requested to be pledged by the Administrative Agent or the Requisite Lenders, (ii) deliver to the Administrative Agent the certificates (if any) representing such Stock and Stock Equivalents, Pledged Notes and other debt Securities (in each case to the extent it constitutes or would constitute Collateral), together with (A) in the case of such certificated Stock and Stock Equivalents, undated stock powers endorsed in blank, and (B) in the case of such certificated debt Securities, endorsed in blank, in each case executed and delivered by a Responsible Officer of the Borrower or such Subsidiary, as the case may be, (iii) cause such new Subsidiary (A) to become a party to this Agreement as a Guarantor (to the extent required under *clause (a)* above) and (B) to take such actions necessary or advisable to grant to the Administrative Agent for the benefit of the Secured Parties a perfected security interest in the Collateral with respect to such new Subsidiary as set forth under *Article X (Security)*, including the filing of Uniform Commercial Code financing statements in such jurisdictions as may be required by this Agreement or by any Requirement of Law or as may be reasonably requested by the Administrative Agent or the Requisite Lenders and (iv) if requested by the Administrative Agent or the Requisite Lenders, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Agent.

Security

Security

To induce the Lenders to make the Loans and the Issuers to issue Letters of Credit, each Grantor hereby grants to the Administrative Agent, for itself and for the ratable benefit of the Secured Parties, as security for the full and prompt payment when due (whether at stated maturity, by acceleration or otherwise) of the Obligations of such Grantor, a continuing valid and perfected lien and security interest with the Requisite Priority in accordance with Sections 364(c)(2) and (3) and (d)(1) of the Bankruptcy Code, in and to all Collateral of such Grantor wherever located, whether real, personal or mixed and whether now owned or hereafter acquired. For purposes of this Agreement, all of the following property now owned or at any time hereafter acquired by a Grantor or in which a Grantor now has or at any time in the future may acquire any right, title or interests is collectively referred to as the "Collateral":

all Accounts;

all Inventory;

all Equipment;

all General Intangibles, including all Intellectual Property and that portion of the Pledged Collateral constituting General Intangibles;

all Investment Property, including all Control Accounts and that portion of the Pledged Collateral constituting Investment Property;

all Documents, Instruments and Chattel Paper;

the Concentration Account and all Cash Collateral Accounts, Blocked Accounts and other deposit accounts;

all Vehicles;

all Real Property;

all books and records pertaining to the property described in this *Section 10.1 (Security)*;

all other goods and personal property of such Grantor, whether tangible or intangible, wherever located, including money, letters of credit and all rights of payment or performance under letters of credit;

all property of any Grantor held by the Administrative Agent or any Secured Party, including all property of every description, in the possession or custody of or in transit to the Administrative Agent or such Secured Party for any purpose, including safekeeping, collection or pledge, for the account of such Grantor, or as to which such Grantor may have any right or power;

to the extent not otherwise included, all monies and other property of any kind received

after the Petition Date by such Grantor in connection with refunds with respect to taxes, assessments and governmental charges imposed on such Grantor or any of its property or income;

to the extent not otherwise included, all claims and causes of action (including pursuant to the Raytheon Litigation and all other claims and causes of actions (whether in arbitration, litigated or otherwise) against Raytheon Company, Raytheon Engineers & Constructors International, Inc. or any Affiliate of either of them and all actions for preferences, fraudulent conveyances, and other avoidance power claims and any recoveries under clause (b) of Section 552 and Sections 506(c), 542, 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code), all monies and other property of any kind received therefrom and all monies and other property of any kind recovered by any Grantor;

to the extent not otherwise included, the Proceeds of any Stock and Stock Equivalents of any Grantor and the proceeds of any redemption, retirement, sinking fund or similar payment, sale or other disposition thereof; and

to the extent not otherwise included, all Proceeds of, all accessions to, substitutions and replacements for and all rents, profits and products of, each of the foregoing and any and all proceeds of insurance, indemnity, warranty or guaranty payable to any Grantor from time to time with respect to any of the foregoing.

Notwithstanding the foregoing, "*Collateral*" (and the terms "*Pledged Collateral*", "*Pledged Stock*", "*Pledged LLC Interests*", "*Pledged Partnership Interests*", "*Additional Pledged Collateral*", "*General Intangible*", "*Investment Property*" and "*Contractual Obligation*", shall not include (a) any equity interest in any joint venture, provided however "*Collateral*" shall include (A) the proceeds of a redemption, retirement, sinking fund or similar payment, sale or other disposition for value of the Stock, Stock Equivalents or other interests in such joint venture held by the Borrower or any of its Subsidiaries and (B) all amounts payable by, and dividends, distributions and other payments on account of the Stock, Stock Equivalents or other interests in, such joint venture to the Borrower or any of its Subsidiaries, (b) unless otherwise provided in *Section 9.8 (Additional Guarantors)*, more than 65% of the equity interest of any Subsidiary not organized under the law of a State of the United States and (c) with respect to any Grantor that is not a Debtor Guarantor or the Borrower, any Contractual Obligation to the extent that the grant by such Grantor of a security interest pursuant to this Agreement would cause a breach or default thereunder giving a rise to a right to terminate such Contractual Obligation and (d) any Contractual Obligation with any Governmental Authority to the extent that the grant by any Grantor of a security interest pursuant to this Agreement would cause a violation or default thereunder or give rise to a right to terminate such Contractual Obligation (provided any necessary consent is not obtained); *provided, however*, that, notwithstanding the foregoing, with respect to clauses (c) and (d) above "*Collateral*" shall include all Proceeds with respect to such Contractual Obligations.

Perfection of Security Interests

Each Grantor shall, at its expense, perform any and all steps reasonably requested by the Administrative Agent at any time to perfect, maintain, protect, and enforce the Lenders' security interest in the Collateral of such Grantor, including (i) executing and filing financing or continuation statements, and amendments thereof, in form and substance satisfactory to the Administrative Agent, (ii) maintaining complete and accurate stock records, (iii) using its best efforts in delivering to the Administrative Agent negotiable warehouse receipts, if any, and, upon the Administrative Agent's request therefor, non-

negotiable warehouse receipts covering any portion of the Collateral located in warehouses and for which warehouse receipts are issued, (iv) placing notations on such Grantor's books of account to disclose the Administrative Agent's security interest therein, (v) delivering to the Administrative Agent all documents, certificates and Instruments necessary or desirable to perfect the Administrative Agent's Lien in letters of credit on which such Grantor is named as beneficiary and all acceptances issued in connection therewith, (vi) after the occurrence and during the continuation of an Event of Default and subject to any required notice provided in the Orders, transferring Inventory maintained in warehouses to other warehouses designated by the Administrative Agent and (vii) taking such other steps as are deemed necessary or desirable to maintain the Administrative Agent's security interest in the Collateral, including title insurance policies, current as built surveys, zoning letters and certificates of occupancy, as shall be reasonably requested by the Administrative Agent, in each case satisfactory to the Administrative Agent, in its sole discretion.

Each Grantor hereby authorizes the Administrative Agent to execute and file financing or continuation statements or other relevant filings and recordings on such Grantor's behalf covering the Collateral. The Administrative Agent may file one or more financing or continuation statements or other relevant filings and recordings disclosing the Administrative Agent's security interest under this Agreement or the other Loan Documents without the signature of such Grantor appearing thereon. Each Grantor shall pay the costs of, or incidental to, any recording or filing of any financing or continuation statements or other relevant filings and recordings concerning the Collateral. Each Grantor agrees that a carbon, photographic, photostatic, or other reproduction of this Agreement or the other Loan Documents or of a financing or continuation statement is sufficient as such filing or recording. If any Collateral is at any time in the possession or control of any warehouseman, bailee or such Grantor's agents or processors, such Grantor shall notify such warehouseman, bailee, agents or processors of the Administrative Agent's security interest, which notification shall specify that such Person shall, upon the occurrence and during the continuance of an Event of Default and subject to any required notice provided in the Orders, hold all such Collateral for the Administrative Agent's account subject to the Administrative Agent's instructions. From time to time, each Grantor shall, upon the Administrative Agent's request, execute and deliver written instruments pledging to the Administrative Agent the Collateral described in any such instruments or otherwise, but the failure of such Grantor to execute and deliver such confirmatory instruments shall not affect or limit the Administrative Agent's security interest or other rights in and to the Collateral. Until all Obligations have been fully satisfied and the Commitments shall have been terminated, the Administrative Agent's security interest in the Collateral and all Proceeds and products thereof shall continue in full force and effect.

Notwithstanding *clauses (a) and (b)* above, or any failure on the part of any Grantor or the Administrative Agent to take any of the actions set forth in such clauses, the Liens and security interests granted herein shall be deemed valid, enforceable and perfected by entry of the Interim Order and the Final Order, as applicable. No financing statement, notice of lien, mortgage, deed of trust or similar instrument in any jurisdiction or filing office need be filed or any other action taken in order to validate and perfect the Liens granted by or pursuant to this Agreement, the Interim Order or the Final Order.

Rights of Lender; Limitations on Lenders' Obligations

Subject to each Grantor's rights and duties under the Bankruptcy Code (including Section 365 of the Bankruptcy Code), it is expressly agreed by each Grantor that, anything herein to the

contrary notwithstanding, such Grantor shall remain liable under its Contractual Obligations to observe and perform all the conditions and obligations to be observed and performed by it thereunder. Neither the Administrative Agent nor any Secured Party shall have any obligation or liability under any Contractual Obligation by reason of or arising out of this Agreement, the Loan Documents, or the granting to the Administrative Agent of a security interest therein or the receipt by the Administrative Agent or any Lender of any payment relating to any Contractual Obligation pursuant hereto, nor shall the Administrative Agent be required or obligated in any manner to perform or fulfill any of the obligations of any Grantor under or pursuant to any Contractual Obligation, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Contractual Obligation, or to present or file any claim, or to take any action to collect or enforce any performance or the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times.

Subject to *Section 10.5 (Performance by Agent of the Loan Parties' Obligations)*, the Administrative Agent authorizes each Grantor to collect its Accounts (*provided, however*, that such collection shall be performed in accordance with such Grantor's customary procedures), and the Administrative Agent may, upon the occurrence and during the continuation of any Event of Default and subject to any requirement of notice provided in the Orders, limit or terminate said authority at any time.

Subject to any requirement of notice provided in the Orders, the Administrative Agent may at any time, upon the occurrence and during the continuation of any Event of Default, after first notifying the Borrower of its intention to do so, notify Account Debtors, notify the other parties to the Contractual Obligations of the Borrower or any other Grantor, notify obligors of Instruments and Investment Property of the Borrower or any other Grantor and notify obligors in respect of Chattel Paper of the Borrower or any other Grantor that the right, title and interest of the Borrower or such Grantor in and under such Accounts, such Contractual Obligations, such Instruments, such Investment Property and such Chattel Paper have been assigned to the Administrative Agent and that payments shall be made directly to the Administrative Agent. Subject to any requirement of notice provided in the Orders, upon the request of the Administrative Agent, the Borrower or such other Grantor shall so notify such Account Debtors, such parties to Contractual Obligations, obligors of such Instruments and Investment Property and obligors in respect of such Chattel Paper. Subject to any requirement of notice provided in the Orders upon the occurrence and during the continuance of any Event of Default, upon the occurrence and during the continuation of an Event of Default, the Administrative Agent may in its own name, or in the name of others, communicate with such parties to such Accounts, Contractual Obligations, Instruments, Investment Property and Chattel Paper to verify with such Persons to the Administrative Agent's reasonable satisfaction the existence, amount and terms of any such Accounts, Contractual Obligations, Instruments, Investment Property or Chattel Paper.

Covenants of the Loan Parties with Respect to Collateral

Each Grantor hereby covenants and agrees with the Administrative Agent that from and after the date of this Agreement and until the Obligations are fully satisfied:

Maintenance of Records. Such Grantor shall keep and maintain, at its own cost and expense, satisfactory and complete records of the Collateral, in all material respects, including a record of all payments received and all credits granted with respect to the Collateral. For the Administrative Agent's further security, each Grantor agrees that the Administrative Agent shall have a property interest

in all of such Grantor's books and records pertaining to the Collateral and, upon the occurrence and during the continuation of an Event of Default and subject to any notice required by the Orders, such Grantor shall deliver and turn over any such books and records to the Administrative Agent or to its representatives at any time on demand of the Administrative Agent.

Indemnification With Respect to Collateral. In any suit, proceeding or action brought by the Administrative Agent relating to any Account, Chattel Paper, Contractual Obligation, General Intangible, Investment Property, Instrument, Intellectual Property or other Collateral for any sum owing thereunder or to enforce any provision of any Account, Chattel Paper, Contractual Obligation, General Intangible, Investment Property, Instrument, Intellectual Property or other Collateral, such Grantor shall save, indemnify and keep the Secured Parties harmless from and against all expense, loss or damage suffered by the Secured Parties by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of the obligor thereunder, arising out of a breach by such Grantor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to, or in favor of, such obligor or its successors from such Grantor, and all such obligations of such Grantor shall be, and shall remain, enforceable against and only against such Grantor and shall not be enforceable against the Administrative Agent; *provided, however*, that the Loan Parties shall not have any obligation under this *clause (b)* to any Person with respect to any expense, loss or damage caused by or resulting from the gross negligence or willful misconduct of such Person, as determined by a court of competent jurisdiction in a final, non-appealable judgment or order.

Limitation on Liens on Collateral. Such Grantor shall not create, permit or suffer to exist, shall defend the Collateral against and shall take such other action as is necessary to remove, any Lien on the Collateral except Liens permitted under *Section 7.2 (Liens, Etc.)*, and such Grantor shall defend the right, title and interest of the Administrative Agent in and to all of such Grantor's rights under the Chattel Paper, Leases, Real Property, Contractual Obligations, Documents, General Intangibles, Instruments, Investment Property and to the Intellectual Property, Equipment and Inventory and in and to the Proceeds thereof against the claims and demands of all Persons whomsoever other than claims or demands arising out of Liens permitted under *Section 7.2*.

Limitations on Modifications of Accounts. Such Grantor shall not, without the Administrative Agent's prior written consent, grant any extension of the time of payment of any of the Accounts, Chattel Paper or Instruments, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Person liable for the payment thereof, or allow any credit or discount whatsoever thereon other than any of the foregoing done in the ordinary course of business, consistent with past practices and trade discounts granted in the ordinary course of business of such Grantor.

Notices. Such Grantor shall advise the Lenders promptly, in reasonable detail, (i) of any Lien asserted against any of the Collateral other than Liens permitted under *Section 7.2 (Liens, Etc.)* and (ii) of the occurrence of any other event that would result in a material adverse change with respect to the aggregate value of the Collateral or on the security interests created hereunder.

Maintenance of Equipment. Such Grantor shall keep and maintain the Equipment in good operating condition sufficient for the continuation of the business conducted by such Grantor on a basis consistent with past practices, ordinary wear and tear excepted.

Pledged Collateral.

Within 30 days of the date hereof the Grantors shall deliver to the Administrative Agent upon request of the Administrative Agent,

share certificates representing all certificated Stock required to be pledged pursuant to this Agreement and stock powers for such share certificates executed in blank, as the Administrative Agent or the Requisite Lenders may require;

instruments representing such of the Pledged Notes pledged pursuant to this Agreement as shall be requested by the Administrative Agent, in each case duly endorsed in favor of the Administrative Agent or in blank; and

Control Account Letters from (1) all Securities Intermediaries with respect to all Securities Accounts and securities entitlements of each Loan Party and (2) all futures commission agents and clearing houses with respect to all commodities contracts and commodities accounts held by each Loan Party as the Administrative Agent may require;

Upon request of the Administrative Agent, such Grantor shall deliver to the Administrative Agent, all certificates or Instruments representing or evidencing any Additional Pledged Collateral, whether now arising or hereafter acquired, in suitable form for transfer by delivery or, as applicable, accompanied by such Grantor's endorsement, where necessary, or duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Administrative Agent, together with a Pledge Amendment, duly executed by the Grantor, in substantially the form of *Exhibit N (Form of Pledge Amendment)*, in respect of such Additional Pledged Collateral and authorizes the Administrative Agent to attach each such Pledge Amendment to this Agreement. Upon the occurrence and during the continuance of any Event of Default and subject to any required notice provided in the Orders, the Administrative Agent shall have the right, at any time in its discretion and without notice to the Grantor, to transfer to or to register in its name or in the name of its nominees any or all of the Pledged Collateral. Upon the occurrence and during the continuance of any Event of Default and subject to any required notice provided in the Orders, the Administrative Agent shall have the right at any time to exchange certificates or instruments representing or evidencing any of the Pledged Collateral for certificates or instruments of smaller or larger denominations.

Except as provided in *Section 10.7 (Remedies, Rights Upon Default)*, such Grantor shall be entitled to receive all cash dividends paid in respect of the Pledged Collateral (other than liquidating or distributing dividends) with respect to the Pledged Collateral. Any sums paid upon or in respect of any of the Pledged Collateral upon the liquidation or dissolution of any issuer of any of the Pledged Collateral, any distribution of capital made on or in respect of any of the Pledged Collateral or any property distributed upon or with respect to any of the Pledged Collateral pursuant to the recapitalization or reclassification of the capital of any issuer of Pledged Collateral or pursuant to the reorganization thereof shall, unless otherwise subject to a perfected security interest in favor of the Administrative Agent, be delivered to the Administrative Agent to be held by it hereunder as additional collateral security for the Secured Obligations. If any sums of money or property so paid or distributed in respect of any of the Pledged Collateral shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to the Administrative Agent, hold such money or property in trust for the Administrative Agent, segregated from other funds of such Grantor, as additional security for the Secured

Obligations.

Except as provided in *Section 10.7 (Remedies, Rights Upon Default)*, such Grantor shall be entitled to exercise all voting, consent and corporate rights with respect to the Pledged Collateral; *provided, however*, that no vote shall be cast, consent given or right exercised or other action taken by such Grantor that would have a Material Adverse Effect or that otherwise would be inconsistent with or result in any violation of any provision of this Agreement or any other Loan Document.

Such Grantor shall not grant Control over any Investment Property to any Person other than the Administrative Agent.

In the case of each Grantor that is an issuer of Pledged Collateral, such Grantor agrees to be bound by the terms of this Agreement relating to the Pledged Collateral issued by it and shall comply with such terms insofar as such terms are applicable to it. In the case of each Grantor that is a partner in a partnership, such Grantor hereby consents to the extent permitted by the applicable partnership agreement to the pledge by each other Grantor, pursuant to the terms hereof, of the Pledged Partnership Interests in such partnership and to the transfer of such Pledged Partnership Interests to the Administrative Agent or its nominee and to the substitution of the Administrative Agent or its nominee as a substituted partner in such partnership with all the rights, powers and duties of a general partner or a limited partner, as the case may be. In the case of each Grantor that is a member of an LLC, such Grantor hereby consents to the extent permitted by the applicable LLC Agreement to the pledge by each other Grantor, pursuant to the terms hereof, of the Pledged LLC Interests in such LLC and to the transfer of such Pledged LLC Interests to the Administrative Agent or its nominee and to the substitution of the Administrative Agent or its nominee as a substituted member of the LLC with all the rights, powers and duties of a member of the LLC in question.

Such Grantor shall not agree to any amendment of an LLC Agreement or partnership agreement that in any way adversely affects the perfection of the security interest of the Administrative Agent in the Pledged Partnership Interests or Pledged LLC Interests pledged by such Grantor hereunder, including electing to treat the membership interest or partnership interest of such Grantor as a security under Section 8-103 of the UCC.

Intellectual Property

Such Grantor (either itself or through licensees) shall (A) continue to use each Trademark that is Material Intellectual Property in order to maintain such Trademark in full force and effect with respect to each class of goods for which such Trademark is currently used, free from any claim of abandonment for non-use, (B) maintain as in the past the quality of products and services offered under such Trademark, (C) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable Requirements of Law, (D) not adopt or use any mark that is confusingly similar or a colorable imitation of such Trademark unless the Administrative Agent shall obtain a perfected security interest in such mark pursuant to this Agreement and (E) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby such Trademark may become invalidated or impaired in any way.

Such Grantor (either itself or through licensees) shall not do any act, or omit to do any act, whereby any Patent that is Material Intellectual Property may become forfeited, abandoned or dedicated to

the public.

Such Grantor (either itself or through licensees) (A) shall not (and shall not permit any licensee or sublicensee thereof to) do any act or omit to do any act whereby any portion of the Copyrights that is Material Intellectual Property may become invalidated or otherwise impaired and (B) shall not (either itself or through licensees) do any act whereby any portion of the Copyrights that is Material Intellectual Property may fall into the public domain.

Such Grantor (either itself or through licensees) shall not do any act, or omit to do any act, whereby any trade secret that is Material Intellectual Property may become publicly available or otherwise unprotectable.

Such Grantor (either itself or through licensees) shall not do any act that knowingly uses any Material Intellectual Property to infringe the intellectual property rights of any other Person.

Such Grantor shall notify the Administrative Agent immediately if it knows, or has reason to know, that any application or registration relating to any Material Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding such Grantor's ownership of, right to use, interest in, or the validity of, any Material Intellectual Property or such Grantor's right to register the same or to own and maintain the same.

Whenever such Grantor, either by itself or through any agent, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency within or outside the United States, such Grantor shall report such filing to the Administrative Agent within five Business Days after the last day of the fiscal quarter in which such filing occurs. Upon request of the Administrative Agent, such Grantor shall execute, deliver and have recorded, any and all agreements, instruments, documents and papers as the Administrative Agent may request to evidence the Administrative Agent's security interest in any Copyright, Patent or Trademark and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

Such Grantor shall take all reasonable actions necessary or requested by the Administrative Agent, including in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of any Copyright, Trademark or Patent that is Material Intellectual Property, including filing of applications for renewal, affidavits of use, affidavits of incontestability and opposition and interference and cancellation proceedings.

In the event that any Material Intellectual Property is infringed upon or misappropriated or diluted by a third party, such Grantor shall notify the Administrative Agent promptly after such Grantor learns thereof. Such Grantor shall take appropriate action in response to such infringement, misappropriation or dilution, including promptly bringing suit for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions may be appropriate in its reasonable judgment under the circumstances to protect

such Material Intellectual Property.

Assignable Government Contracts

No later than 30 days after the Closing Date, each Grantor shall have executed and delivered to the Administrative Agent assignments and notices of assignment substantially in the form of *Exhibit G (Forms of Assignment and Notice of Assignment of Government Contract)* for each Assignable Government Contract in effect on the Closing Date and having an initial stated contract value to such Grantor in excess of \$5,000,000. Upon the filing by the Administrative Agent with (A) the proper contracting officer or the proper agency head, as applicable, (B) the proper disbursing officer designated in the applicable Assignable Government Contract and (C) where applicable, the proper surety on any bond applicable to the Assignable Government Contract (in each case, as specified by the Grantor with respect to each Assignable Government Contract in accordance with this *clause (i) (Assignable Government Contracts)*), of three copies of a notice of assignment substantially in the form of *Exhibit G (Forms of Assignment and Notice of Assignment of Government Contract)* with respect to each Assignable Government Contract, this Agreement shall constitute a valid assignment of such Assignable Government Contract to the extent that such validity and assignment are governed by the Assignment of Claims Act.

Within 90 days after any Government Contract becomes an Assignable Government Contract having an initial stated contract value to any Grantor in excess of \$5,000,000, such Grantor shall execute and deliver to the Administrative Agent a notice of assignment substantially in the form of *Exhibit G (Forms of Assignment and Notice of Assignment of Government Contract)* with respect to such Assignable Government Contract. The notices of assignment required by this *clause (i) (Assignable Government Contracts)* shall include with respect to each Assignable Government Contract a notice of assignment addressed to (A) the proper disbursing officer or the proper agency head, as applicable, (B) the proper disbursing officer designated in the applicable Assignable Government Contract and (C) where applicable, the proper surety on any bond applicable to the Assignable Government Contract.

If an Event of Default shall have occurred and be continuing for 10 days (or, if the Obligations or the maturity thereof shall have been accelerated pursuant to this agreement, immediately upon such acceleration but subject to any required notice provided in the Orders) then, upon request of the Requisite Lenders, the Administrative Agent shall, at the Grantors' expense, file, deliver and record with the Government, in accordance with the Assignment of Claims Act, any statement, notice, assignment, agreement or other document executed or delivered pursuant to this *clause (i) (Assignable Government Contracts)* with respect to Assignable Government Contracts.

Each Grantor agrees to execute such other documents and agreements and to take such other action as may be reasonably necessary or appropriate to implement this *clause (i) (Assignable Government Contracts)* and the consummation of the transactions contemplated hereby, including the assignment of the Assignable Government Contracts and, to the extent requested by the Administrative Agent or the Requisite Lenders and to the extent permitted by applicable Requirements of Law and by such Contractual Obligation, the assignment of any other Contractual Obligation with any Governmental Authority.

Performance by Agent of the Loan Parties' Obligations

If any Grantor fails to perform or comply with any of its agreements contained herein and the Administrative Agent, as provided for by the terms of this Agreement, shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, the expenses of the Administrative Agent incurred in connection with such performance or compliance, together with interest thereon at the rate then in effect in respect of the Loan, shall be payable by such Grantor to the Administrative Agent on demand and shall constitute Obligations secured by the Collateral. Performance of such Grantor's obligations as permitted under this *Section 10.5* shall in no way constitute a violation of the automatic stay provided by Section 362 of the Bankruptcy Code and each Grantor hereby waives applicability thereof. Moreover, the Administrative Agent shall in no way be responsible for the payment of any costs incurred in connection with preserving or disposing of Collateral pursuant to clause (c) of Section 506 of the Bankruptcy Code and the Collateral may not be charged for the incurrence of any such cost.

Limitation on Agent's Duty in Respect of Collateral

Neither the Administrative Agent nor any Lender shall have any duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of it or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto, except that the Administrative Agent shall, with respect to the Collateral in its possession or under its control, deal with such Collateral in the same manner as the Administrative Agent deals with similar property for its own account. Upon request of the Borrower, the Administrative Agent shall account for any moneys received by it in respect of any foreclosure on or disposition of the Collateral of any Grantor.

Remedies, Rights Upon Default

If any Event of Default shall occur and be continuing and subject to any required notice provided in the Orders, the Administrative Agent may exercise in addition to all other rights and remedies granted to it in this Agreement and in any other Loan Document, all rights and remedies of a secured party under the UCC. Without limiting the generality of the foregoing, each Grantor expressly agrees that, during any such occurrence and continuance of any Event of Default (subject to any required notice provided in the Orders), the Administrative Agent, without demand of performance or other demand, advertisement or notice of any kind (except the notice required by the Interim Order or Final Order or the notice specified below of time and place of public or private sale) to or upon such Grantor or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the UCC and other applicable law), may forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, assign, give an option or options to purchase, or sell or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any exchange or broker's board or at any of the Administrative Agent's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Administrative Agent shall have the right upon any such public sale or sales to purchase the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption each Grantor hereby releases. Each Grantor further agrees that, during any such occurrence and continuance of any Event of Default (subject to any required notice provided in the Orders), at the Administrative Agent's request, it shall assemble the Collateral and make it available to the Administrative Agent at places the Administrative Agent shall reasonably select, whether at such Grantor's premises or elsewhere. The Administrative Agent shall apply the proceeds of any such collection, recovery, receipt,

appropriation, realization or sale (net of all expenses incurred by the Administrative Agent in connection therewith, including attorney's fees and expenses), to the Obligations in any order deemed appropriate by the Administrative Agent, such Grantor remaining liable for any deficiency remaining unpaid after such application, and only after so paying over such net proceeds and after the payment by the Administrative Agent of any other amount required by any provision of law, including subclause (c) of clause (I) of Section 9-504 of the UCC, need the Administrative Agent account for the surplus, if any, to such Grantor. To the maximum extent permitted by applicable law, each Grantor waives all claims, damages, and demands against the Administrative Agent and the Lenders arising out of the repossession, retention or sale of the Collateral except such as arise out of the gross negligence or willful misconduct of the Administrative Agent. Each Grantor agrees that the Administrative Agent need not give more than ten (10) days' notice to the Borrower (which notification shall be deemed given when mailed or delivered on an overnight basis, postage prepaid, addressed to the Borrower at its address referred to in *Section 12.8 (Notices, Etc.)*) of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters. The Grantors shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which the Administrative Agent is entitled, the Grantors also being liable for the fees and expenses of any attorneys employed by the Administrative Agent to collect such deficiency.

Each Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral.

Pledged Collateral

During the continuance of an Event of Default (subject to any required notice provided in the Orders), if the Administrative Agent shall give notice of its intent to exercise such rights to the relevant Grantor or Grantors, (A) the Administrative Agent shall have the right to receive any and all cash dividends, payments or other Proceeds paid in respect of the Pledged Collateral and make application thereof to the Obligations in the order set forth herein and (B) the Administrative Agent or its nominee may exercise (1) all voting, consent, corporate and other rights pertaining to the Pledged Collateral at any meeting of shareholders, partners or members, as the case may be, of the relevant issuer or issuers of Pledged Collateral or otherwise and (2) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to the Pledged Collateral as if it were the absolute owner thereof (including the right to exchange at its discretion any and all of the Pledged Collateral upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate structure of any issuer of Pledged Collateral, the right to deposit and deliver any and all of the Pledged Collateral with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as the Administrative Agent may determine), all without liability except to account for property actually received by it, but the Administrative Agent shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

In order to permit the Administrative Agent to exercise the voting and other consensual rights it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions it may be entitled to receive hereunder, (A) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Administrative Agent all such proxies, dividend payment orders and other instruments as the Administrative Agent may from time to time reasonably request and (B) without

limiting the effect of *subclause (i)* above, such Grantor hereby grants to the Administrative Agent an irrevocable proxy to vote all or any part of the Pledged Collateral and to exercise all other rights, powers, privileges and remedies to which a holder of the Pledged Collateral would be entitled (including giving or withholding written consents of shareholders, partners or members, as the case may be, calling special meetings of shareholders, partners or members, as the case may be, and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Collateral on the record books of the issuer thereof) by any other person (including the issuer of such Pledged Collateral or any officer or agent thereof) during the continuance of an Event of Default and which proxy shall only terminate upon the payment in full of the Secured Obligations.

Each Grantor hereby expressly authorizes and instructs each issuer of any Pledged Collateral pledged hereunder by such Grantor to (A) comply with any instruction received by it from the Administrative Agent in writing that (1) states that an Event of Default has occurred and is continuing and (2) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that such issuer shall be fully protected in so complying, and (B) if any Default or Event of Default shall have occurred and be continuing, pay any dividends or other payments with respect to the Pledged Collateral directly to the Administrative Agent.

The Administrative Agent's Appointment as Attorney-in-Fact

Each Grantor hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its and its Subsidiaries true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor, or in its own name, from time to time in the Administrative Agent's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action, and to execute and deliver any and all documents and instruments, that may be necessary and desirable to accomplish the purposes of this Agreement and the transactions contemplated hereby, and, without limiting the generality of the foregoing, hereby give the Administrative Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor to do the following (other than any notice required in the Orders) upon the occurrence and during the continuance of an Event of Default:

to ask, demand, collect, receive and give acquittances and receipts for any and all moneys due and to become due under any Collateral and, in the name of such Grantor, its own name or otherwise, to take possession of, and endorse and collect, any checks, drafts, notes, acceptances or other Instruments for the payment of moneys due under any Collateral and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due under any Collateral whenever payable and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due under any Collateral whenever payable;

to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Collateral, to effect any repairs or any insurance called for by the terms of this Agreement and to pay all or any part of the premiums therefor and the costs thereof; and

(A) to direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due and to become due thereunder directly to the Administrative Agent or

as the Administrative Agent shall direct, (B) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral, (C) to sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with accounts and other documents constituting or relating to the Collateral, (D) to commence and prosecute any suits, actions or proceedings at law or equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral, (E) to defend any suit, action or proceeding brought against any Grantor with respect to any Collateral of such Grantor, (F) to settle, compromise or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as the Administrative Agent may deem appropriate, (G) to license or, to the extent permitted by an applicable license, sublicense, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any Trademarks, throughout the world for such term or terms, on such conditions, and in such manner, as the Administrative Agent shall in its sole discretion determine and (H) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and to do, at the Administrative Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things the Administrative Agent reasonably deems necessary to protect, preserve or realize upon the Collateral and the Administrative Agent's Lien therein, in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

The Administrative Agent agrees that it will forbear from exercising the power of attorney or any rights granted to the Administrative Agent pursuant to this *Section 10.8*, except upon the occurrence or during the continuation of an Event of Default. The Grantors hereby ratify, to the extent permitted by law, all that said attorneys shall lawfully do or cause to be done by virtue hereof. Exercise by the Administrative Agent of the powers granted hereunder is not a violation of the automatic stay provided by Section 362 of the Bankruptcy Code and each Grantor waives applicability thereof. The power of attorney granted pursuant to this *Section 10.8* is a power coupled with an interest and shall be irrevocable until the Obligations are indefeasibly paid in full.

The powers conferred on the Administrative Agent hereunder are solely to protect the Administrative Agent's and the Lenders' interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Administrative Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act, except for its own gross negligence or willful misconduct.

Each Grantor also authorizes the Administrative Agent, at any time and from time to time upon the occurrence and during the continuation of any Event of Default (subject to any required notice provided in the Orders), (i) to communicate in its own name or the name of its Subsidiaries with any party to any Contractual Obligation with regard to the assignment of the right, title and interest of such Grantor in and under the Contractual Obligations hereunder and other matters relating thereto and (ii) to execute any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

All Obligations shall constitute, in accordance with Section 364(c)(1) of the Bankruptcy Code, claims against the Borrower and each other Grantor in its Case that are administrative expense

claims having priority over any all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code.

Modifications

The Liens, lien priority, administrative priorities and other rights and remedies granted to the Administrative Agent for the benefit of the Lenders pursuant to this Agreement, the Interim Order or the Final Order (including the existence, perfection and priority of the Liens provided herein and therein and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by any of the Grantors (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Cases, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission:

except for the Carve-Out having priority over the Obligations, no costs or expenses of administration that have been or may be incurred in any of the Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or shall be prior to or on a parity with any claim of the Administrative Agent or the Lenders against the Grantors in respect of any Obligation;

the Liens granted herein shall constitute valid and perfected liens and security interests with the Requisite Priority in accordance (for those liens granted by the Borrower and any Debtor Guarantor) with Sections 364(c)(2) and (3) and (d)(1) of the Bankruptcy Code.

except with respect to Guarantors that are not Debtor Guarantors, the Liens granted hereunder shall continue valid and perfected without the necessity that financing statements be filed or that any other action be taken under applicable nonbankruptcy law.

Notwithstanding any failure on the part of any Grantor or the Administrative Agent or the Lenders to perfect, maintain, protect or enforce the Liens in the Collateral granted hereunder, the Interim Order and the Final Order (when entered) shall, automatically and without further action by any Person, perfect such Liens against the Collateral.

The Administrative Agent; the Other Agents

Authorization and Action

Each Lender and each Issuer hereby appoints CSFB as the Administrative Agent hereunder and each Lender and each Issuer authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. Without limiting the foregoing, each Lender and each Issuer hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party and to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents and that under such Loan

Documents the Administrative Agent is acting as agent for the Lenders, Issuers and the other Secured Parties.

As to any matters not expressly provided for by this Agreement and the other Loan Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Requisite Lenders, and such instructions shall be binding upon all Lenders and each Issuer; *provided, however*, that the Administrative Agent shall not be required to take any action that (i) the Administrative Agent in good faith believes exposes it to personal liability unless the Administrative Agent receives an indemnification satisfactory to it from the Lenders and the Issuers with respect to such action or (ii) is contrary to this Agreement or applicable Requirement of Law. The Administrative Agent agrees to give to each Lender and each Issuer prompt notice of each notice given to it by any Loan Party pursuant to the terms of this Agreement or the other Loan Documents.

In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuers and its duties are entirely administrative in nature. The Administrative Agent does not assume and shall not be deemed to have assumed any obligation other than as expressly set forth herein and in the other Loan Documents or any other relationship as the Administrative Agent, fiduciary or trustee of or for any Lender, Issuer or holder of any other Obligation. The Administrative Agent may perform any of its duties under any of the Loan Documents by or through its agents or employees.

Agent's Reliance, Etc.

Neither the Administrative Agent nor any of its Affiliates or any of the respective directors, officers, agents or employees of the Administrative Agent or any such Affiliate shall be liable for any action taken or omitted to be taken by it, him, her or them under or in connection with this Agreement or the other Loan Documents, except for its, his, her or their own gross negligence or willful misconduct. Without limiting the foregoing, the Administrative Agent (a) may treat the payee of any Note as its holder until such Note has been assigned in accordance with *Section 12.2 (Assignments and Participations)*, (b) may rely on the Register to the extent set forth in *clause (c) of Section 12.2 (Assignments and Participations)*, (c) may consult with legal counsel (including counsel to the Borrower or any other Loan Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (d) makes no warranty or representation to any Lender or Issuer and shall not be responsible to any Lender or Issuer for any statements, warranties or representations made by or on behalf of the Borrower or any of its Subsidiaries in or in connection with this Agreement or any of the other Loan Documents, (e) shall not have any duty to ascertain or to inquire either as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any of the other Loan Documents or the financial condition of any Loan Party, or the existence or possible existence of any Default or Event of Default, (f) shall not be responsible to any Lender or Issuer for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any of the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto and (g) shall incur no liability under or in respect of this Agreement or any of the other Loan Documents by acting upon any notice, consent, certificate or other instrument or writing (which may be by telecopy) or any telephone message believed by it to be genuine and signed or sent by the proper party

or parties.

The Administrative Agent Individually

With respect to its Ratable Portion, CSFB shall have, and may exercise, the same rights and powers hereunder, and is subject to the same obligations and liabilities as, any other Lender, in each case to the extent set forth herein. The terms "*Lenders*" or "*Requisite Lenders*" or any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender or as one of the Requisite Lenders. CSFB and its Affiliates may accept deposits from, lend money to and generally engage in any kind of banking, trust or other business with, any Loan Party as if it were not acting as the Administrative Agent.

Lender Credit Decision

Each Lender and each Issuer acknowledges that it shall, independently and without reliance upon the Administrative Agent or any other Lender conduct its own independent investigation of the financial condition and affairs of the Borrower and each other Loan Party in connection with the making and continuance of the Loans and with the issuance of the Letters of Credit. Each Lender and each Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and other Loan Documents.

Indemnification

Each Lender agrees to indemnify the Administrative Agent and each of its Affiliates, and each of their respective directors, officers, employees, agents and advisors (to the extent not reimbursed by the Borrower), from and against such Lender's aggregate Ratable Portion of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements (including reasonable fees and disbursements of financial and legal advisors) of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against, the Administrative Agent or any of its Affiliates, directors, officers, employees, agents and advisors in any way relating to or arising out of this Agreement or the other Loan Documents or any action taken or omitted by the Administrative Agent under this Agreement or the other Loan Documents; *provided, however*, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's or such Affiliate's gross negligence or willful misconduct. Without limiting the foregoing, each Lender agrees to reimburse the Administrative Agent promptly upon demand for its ratable share of any out-of-pocket expenses (including fees and disbursements of financial and legal advisors) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of its rights or responsibilities under, this Agreement or the other Loan Documents, to the extent that the Administrative Agent is not reimbursed for such expenses by the Borrower or another Loan Party.

Successor Agent

The Administrative Agent may resign at any time by giving written notice thereof to the

Lenders and the Borrower. Upon any such resignation, the Requisite Lenders shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed by the Requisite Lenders and shall have accepted such appointment within 30 days after the retiring Agent's giving of notice of resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent, selected from among the Lenders. In either case, such appointment shall be subject to the prior written approval of the Borrower (which approval may not be unreasonably withheld and shall not be required upon the occurrence and during the continuance of an Event of Default). Upon the acceptance of any appointment as Agent by a successor Agent, such successor Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Agent's resignation hereunder as Agent, the retiring Agent shall take such action as may be reasonably necessary to assign to the successor Agent its rights as Agent under the Loan Documents. After such resignation, the retiring Agent shall continue to have the benefit of this *Article XI* as to any actions taken or omitted to be taken by it while it was Agent under this Agreement and the other Loan Documents.

The Other Agents

Each Lender hereby appoints CSFB as "Collateral Agent" and as "Arranger". Notwithstanding anything to the contrary contained in this Agreement, CSFB is a Lender designated as "Collateral Agent" and "Arranger", in each case for title purposes only and, in such capacity, shall not have any obligations or duties whatsoever under this Agreement or any other Loan Document to any Loan Party, any Lender or any Issuer and shall not have any rights separate from its rights as a Lender or as an Administrative Agent, except as expressly provided in this Agreement.

Miscellaneous

Amendments, Waivers, Etc.

Requisite Lenders and Exceptions. No amendment or waiver of any provision of this Agreement or any other Loan Document (including the Budget) nor consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be in writing and signed by the Requisite Lenders, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that:

Supermajority Requirement. no amendment, waiver or consent shall, unless in writing and signed by the Supermajority Lenders, amend or waive compliance with *clause (b) of Section 2.1 (The Commitments)*, *clause (b) of Section 5.12 (Bankruptcy Court)* or *clause (m) of Section 8.1 (Events of Default)*;

100% Requirements. no amendment, waiver or consent shall, unless in writing and signed by each Lender, in addition to the Requisite Lenders, do any of the following:

waive any of the conditions specified in *Section 3.1 (Conditions Precedent to Initial Loans and Letters of Credit)*

increase the Commitments of any Lender or subject such Lender to any additional obligations (other than in accordance with *clause (b) of Section 2.1 (The Commitments)*);

increase the Total Commitment to an amount exceeding \$350,000,000;

extend the scheduled final maturity of any Loan, or waive, reduce or postpone any scheduled date fixed for the payment or reduction of principal (it being understood that *Section 2.8 (Mandatory Prepayments)* does not provide for scheduled dates fixed for payment) or of the Commitments;

reduce the principal amount of any Loan or Reimbursement Obligation (other than by the payment or prepayment thereof);

reduce the rate of interest on any Loan or Reimbursement Obligations or any fee payable hereunder;

postpone any scheduled date fixed for payment of such interest or fees;

change the aggregate Ratable Portions of the Lenders that shall be required for the Lenders or any of them to take any action hereunder;

release substantially all of the Collateral or release any Guarantor from its obligations under the Guaranty except in connection with sale or other disposition permitted by this Agreement (or permitted pursuant to a waiver or consent of a transaction otherwise prohibited by this Agreement); or

amend this *Section 12.1* or the definition of the terms "*Requisite Lenders*", "*Supermajority Lenders*", "*Ratable Portion*" or "*Total Commitment*"; or any provision that by its original terms requires consent, action or approval by each Lender or all Lenders;

Administrative Agent Consent. no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Administrative Agent under this Agreement or the other Loan Documents or amend the Budget; and

Issuer Consent. no amendment, waiver or consent shall, unless in writing and signed by all Issuers in addition to the Lenders required above to take such action, affect the rights or duties of the Issuers under this Agreement or the other Loan Documents (other than the Budget).

Consent of Lenders. Any provision requiring the consent of each Lender, the Supermajority Lenders or the Requisite Lenders shall not be amended (and compliance with such provision shall not be waived) without the consent of each Lender, the Supermajority Lenders or the Requisite Lenders, as the case may be.

The Administrative Agent may, but shall have no obligation to, with the written concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on the Borrower in any case shall entitle the

Borrower to any other or further notice or demand in similar or other circumstances.

In connection with any proposed amendment, modification, waiver or termination (a "*Proposed Change*") requiring the consent of all affected Lenders, the consent of Requisite Lenders is obtained, but the consent of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in this *Section 12.1* being referred to as a "*Non-Consenting Lender*"), then, so long as the Lender that is acting as the Administrative Agent is not a Non-Consenting Lender, at the Borrower's request, the Administrative Agent or an Eligible Assignee that is acceptable to the Administrative Agent shall have the right with the Administrative Agent's consent and in the Administrative Agent's sole discretion (but shall have no obligation) to purchase from such Non-Consenting Lender, and such Non-Consenting Lender agrees that it shall, upon the Administrative Agent's request, sell and assign to the Lender that is acting as the Administrative Agent or such Eligible Assignee, all of the Commitments and Outstandings of such Non-Consenting Lender for an amount equal to the principal balance of all Loans held by the Non-Consenting Lender and all accrued interest and fees with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed Assignment and Acceptance.

Assignments and Participations

Each Lender may sell, transfer, negotiate or assign to one or more Eligible Assignees all or a portion of its rights and obligations hereunder (including all of its rights and obligations with respect to the Loans and the Letters of Credit); *provided, however*, that (i) the aggregate amount being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment) shall in no event (if less than the Assignor's entire interest) be less than \$2,500,000 or an integral multiple of \$1,000,000 in excess thereof, except, in either case, (A) with the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed), (B) if such assignment is being made to a Lender or an Affiliate or Approved Fund of such Lender, or (C) for the assignment of all rights and obligations of such Lender and (ii) if such Eligible Assignee is not, prior to the date of such assignment, a Lender or an Affiliate or Approved Fund of a Lender, such assignment shall be subject to the prior consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed).

The parties to each assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording, an Assignment and Acceptance, together with any Note (if the assigning Lender's Loans are evidenced by a Note) subject to such assignment. Upon such execution, delivery, acceptance and recording and the receipt by the Administrative Agent from the assignee of an assignment fee in the amount of \$3,500 from and after the effective date specified in such Assignment and Acceptance, (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Loan Documents have been assigned to such assignee pursuant to such Assignment and Acceptance, have the rights and obligations of a Lender, and if such Lender were an Issuer, of such Issuer hereunder and thereunder and (ii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except for those surviving the payment in full of the Obligations) and be released from its obligations under the Loan Documents, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto).

The Administrative Agent shall maintain at its address referred to in *Section 12.8 (Notices, Etc.)* a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recording of the names and addresses of the Lenders and the Commitments and principal amount of the Loans and Letter of Credit Obligations owing to each Lender from time to time (the "*Register*"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Loan Parties, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender for all purposes of this Agreement. The Register shall be available for inspection by the Borrower, the Administrative Agent or any Lender at any reasonable time and from time to time upon reasonable prior notice.

Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an assignee, the Administrative Agent shall, if such Assignment and Acceptance has been completed, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Borrower. Within five Business Days after its receipt of such notice, the Borrower, at its own expense, shall, if requested by such assignee, execute and deliver to the Administrative Agent new Notes to the order of such assignee in an amount equal to the Commitments assumed by it pursuant to such Assignment and Acceptance and, if the assigning Lender has surrendered any Note for exchange in connection with the assignment and has retained Commitments hereunder, new Notes to the order of the assigning Lender in an amount equal to the Commitments retained by it hereunder. Such new Notes shall be dated the same date as the surrendered Notes and be in substantially the form of *Exhibit B (Form of Note)*.

In addition to the other assignment rights provided in this *Section 12.2*, each Lender may assign, as collateral or otherwise, any of its rights under this Agreement (including rights to payments of principal or interest on the Loans) to (i) any Federal Reserve Bank pursuant to Regulation A of the Federal Reserve Board without notice to or consent of the Borrower or the Administrative Agent and (ii) any trustee for the benefit of the holders of such Lender's Securities; *provided, however*, that no such assignment shall release the assigning Lender from any of its obligations hereunder.

Each Lender may sell participations to one or more Persons in or to all or a portion of its rights and obligations under the Loan Documents (including all its rights and obligations with respect to the Loans and Letters of Credit). The terms of such participation shall not, in any event, require the participant's consent to any amendments, waivers or other modifications of any provision of any Loan Documents, the consent to any departure by any Loan Party therefrom, or to the exercising or refraining from exercising any powers or rights that such Lender may have under or in respect of the Loan Documents (including the right to enforce the obligations of the Loan Parties), except if any such amendment, waiver or other modification or consent would (i) reduce the amount, or postpone any date fixed for, any amount (whether of principal, interest or fees) payable to such participant under the Loan Documents, to which such participant would otherwise be entitled under such participation or (ii) result in the release of all or substantially all of the Collateral. In the event of the sale of any participation by any Lender, (A) such Lender's obligations under the Loan Documents shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties for the performance of such obligations, (C) such Lender shall remain the holder of such Obligations for all purposes of this Agreement and (D) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Each participant shall be entitled to the benefits of 2.12 (*Capital Adequacy*) and 2.13 (*Taxes*) as if it were a Lender; *provided, however*, that anything herein to the contrary notwithstanding, the Borrower shall

not, at any time, be obligated to pay to any participant of any interest of any Lender, under 2.12 (*Capital Adequacy*) or 2.13 (*Taxes*), any sum in excess of the sum that the Borrower would have been obligated to pay to such Lender in respect of such interest had such participation not been sold, without duplication of any amounts actually paid to such Lender.

Any Issuer may at any time assign its rights and obligations hereunder to any other Lender by an instrument in form and substance satisfactory to the Borrower, the Administrative Agent, such Issuer and such Lender. If any Issuer ceases to be a Lender hereunder by virtue of any assignment made pursuant to this Section 12.2, then, as of the effective date of such cessation, such Issuer's obligations to issue Letters of Credit pursuant to Section 2.3 (*Letters of Credit*) shall terminate and such Issuer shall be an Issuer hereunder only with respect to outstanding Letters of Credit issued prior to such date.

Costs and Expenses

The Loan Parties agree upon demand to pay, or reimburse the Administrative Agent for, all of the Administrative Agent's reasonable internal and external audit, legal, appraisal, valuation, filing, document duplication and reproduction and investigation expenses and for all other reasonable out-of-pocket costs and expenses of every type and nature (including the reasonable fees, expenses and disbursements of the Administrative Agent's counsel, Weil, Gotshal & Manges LLP, Conway, DelGenio, Gries & Co., LLC, HATCH, local legal counsel, auditors, accountants, appraisers, printers, insurance and environmental advisors, and other consultants and agents) incurred by the Administrative Agent in connection with (i) the Administrative Agent's audit and investigation of the Borrower and its Subsidiaries in connection with the preparation, negotiation and execution of the Loan Documents and the Administrative Agent's periodic audits of the Borrower and its Subsidiaries, as the case may be, (ii) the preparation, negotiation, execution and interpretation of this Agreement (including the satisfaction or attempted satisfaction of any of the conditions set forth in *Article III (Conditions To Loans And Letters Of Credit)*), the Loan Documents and any proposal letter or commitment letter issued in connection therewith and the making of the Loans hereunder, (iii) the creation, perfection or protection of the Liens under the Loan Documents (including any reasonable fees and expenses for local counsel in various jurisdictions), (iv) the ongoing administration of this Agreement and the Loans, including consultation with attorneys in connection therewith and with respect to the Administrative Agent's rights and responsibilities hereunder and under the other Loan Documents, (v) the protection, collection or enforcement of any of the Obligations or the enforcement of any of the Loan Documents, (vi) the commencement, defense or intervention in any court proceeding relating in any way to the Obligations, any Loan Party, any of the Borrower's Subsidiaries, this Agreement or any of the other Loan Documents, (vii) the response to, and preparation for, any subpoena or request for document production with which the Administrative Agent is served or deposition or other proceeding in which the Administrative Agent is called to testify, in each case, relating in any way to the Obligations, any Loan Party, any of the Borrowers' Subsidiaries, this Agreement or any of the other Loan Documents and (viii) any amendments, consents, waivers, assignments, restatements and supplements to any of the Loan Documents and the preparation, negotiation and execution thereof.

The Borrower further agrees to pay or reimburse the Administrative Agent and each of the Lenders and Issuers upon demand for all out-of-pocket costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel and costs of settlement), incurred by the Administrative Agent, such Lenders or Issuers (i) in enforcing any Loan Document or Obligation or any

security therefor or exercising or enforcing any other right or remedy available by reason of an Event of Default, (ii) in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or in any insolvency or bankruptcy proceeding, (iii) in commencing, defending or intervening in any litigation or in filing a petition, complaint, answer, motion or other pleadings in any legal proceeding relating to the Obligations, any Loan Party, any of the Borrowers' Subsidiaries and related to or arising out of the transactions contemplated hereby or by any of the other Loan Documents and (iv) in taking any other action in or with respect to any suit or proceeding (bankruptcy or otherwise) described in *clauses (i) through (iii)* above.

Indemnities

The Loan Parties agree to indemnify and hold harmless the Administrative Agent, each Lender, each Issuer and each of their respective Affiliates, and each of the directors, officers, employees, agents, representative, attorneys, consultants and advisors of or to any of the foregoing (including those retained in connection with the satisfaction or attempted satisfaction of any of the conditions set forth in *Article III (Conditions To Loans And Letters Of Credit)*) (each such Person being an "Indemnatee") from and against any and all claims, damages, liabilities, obligations, losses, penalties, actions, judgments, suits, costs, disbursements and expenses of any kind or nature (including fees and disbursements of counsel to any such Indemnatee) that may be imposed on, incurred by or asserted against any such Indemnatee in connection with or arising out of any investigation, litigation or proceeding, whether or not any such Indemnatee is a party thereto, whether direct, indirect or consequential and whether based on any federal, state or local law or other statutory regulation, securities or commercial law or regulation, or under common law or in equity, or on contract, tort or otherwise, in any manner relating to or arising out of this Agreement, any other Loan Document, any Obligation, any Letter of Credit, any Disclosure Document, or any act, event or transaction related or attendant to any thereof, or the use or intended use of the proceeds of the Loans or Letters of Credit or in connection with any investigation of any potential matter covered hereby (collectively, the "*Indemnified Matters*"); *provided, however*, that the Loan Parties shall not have any obligation under this *Section 10.4* to an Indemnatee with respect to any Indemnified Matter caused by or resulting from the gross negligence or willful misconduct of that Indemnatee, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. Without limiting the foregoing, Indemnified Matters include (i) all Environmental Liabilities and Costs arising from or connected with the past, present or future operations of the Borrower or any of its Subsidiaries involving any property subject to a Collateral Document, or damage to real or personal property or natural resources or harm or injury alleged to have resulted from any Release of Contaminants on, upon or into such property or any contiguous real estate, (ii) any costs or liabilities incurred in connection with any Remedial Action concerning the Borrower or any of its Subsidiaries, (iii) any costs or liabilities incurred in connection with any Environmental Lien and (iv) any costs or liabilities incurred in connection with any other matter under any Environmental Law, including CERCLA and applicable state property transfer laws, whether, with respect to any of such matters, such Indemnatee is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor in interest to the Borrower or any of its Subsidiaries, or the owner, lessee or operator of any property of the Borrower or any of its Subsidiaries by virtue of foreclosure, except, with respect to those matters referred to in *subclauses (i), (ii), (iii) and (iv)* above, to the extent (A) incurred following foreclosure by the Administrative Agent, any Lender or any Issuer, or the Administrative Agent, any Lender or any Issuer having become the successor in interest to the Borrower or any of its Subsidiaries and (B) attributable solely to acts of the Administrative Agent, such Lender or such Issuer or any agent on behalf of the Administrative Agent or such Lender.

The Borrower shall indemnify the Administrative Agent, the Lenders and each Issuer for, and hold the Administrative Agent, the Lenders and each Issuer harmless from and against, any and all claims for brokerage commissions, fees and other compensation made against the Administrative Agent, the Lenders and the Issuers for any broker, finder or consultant with respect to any agreement, arrangement or understanding made by or on behalf of any Loan Party or any of its Subsidiaries in connection with the transactions contemplated by this Agreement.

The Administrative Agent, each Lender and each Issuer agree that in the event that any such investigation, litigation or proceeding set forth in *clause (b)* above is asserted or threatened in writing or instituted against it or any other Indemnitee, or any Remedial Action, is requested of it or any of its officers, directors, Administrative Agents and employees, for which any Indemnitee may desire indemnity or defense hereunder, such Indemnitee shall promptly notify the Borrower in writing.

The Borrower, at the request of any Indemnitee, shall have the obligation to defend against such investigation, litigation or proceeding or requested Remedial Action, and the Borrower, in any event, may participate in the defense thereof with legal counsel of the Borrower's choice. In the event that such Indemnitee requests the Borrower to defend against such investigation, litigation, proceeding or requested Remedial Action, the Borrower shall promptly do so, and such Indemnitee shall have the right to have legal counsel of its choice participate in such defense. No action taken by legal counsel chosen by such Indemnitee in defending against any such investigation, litigation, proceeding or requested Remedial Action, shall vitiate or in any way impair the Borrower's obligation and duty hereunder to indemnify and hold harmless such Indemnitee.

The Loan Parties agree that any indemnification or other protection provided to any Indemnitee pursuant to this Agreement (including pursuant to this *Section 10.4*) or any other Loan Document shall (i) survive payment in full of the Obligations and (ii) inure to the benefit of any Person who was at any time an Indemnitee under this Agreement or any other Loan Document.

Limitation of Liability

The Borrower agrees that no Indemnitee shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any Loan Party or any of their respective Subsidiaries or any of their equity holders or creditors for or in connection with the transactions contemplated hereby and in the other Loan Documents, except to the extent such liability is found in a final judgment by a court of competent jurisdiction to have resulted from such Indemnitee's gross negligence or willful misconduct. In no event, however, shall any Indemnified Party be liable on any theory of liability for any special, indirect, consequential or punitive damages, and the Borrower hereby waives, releases and agrees (for itself and on behalf of its Subsidiaries) not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Right of Set-off

Upon the occurrence and during the continuance of any Event of Default (subject to any required notice provided in the Orders) each Lender and each Affiliate of a Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or its Affiliates to or for the credit or the account of any Loan Parties

against any and all of the Obligations now or hereafter existing, whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and even though such Obligations may be unmatured. Each Lender agrees promptly to notify the Borrower after any such set-off and application made by such Lender or its Affiliates; *provided, however*, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender under this *Section 12.6* are in addition to the other rights and remedies (including other rights of set-off) that such Lender may have.

Sharing of Payments, Etc.

If any Lender shall receive any payment (whether voluntary, involuntary, through the exercise of any right of set-off or otherwise) of the Loans owing to it, any interest thereon, fees in respect thereof or amounts due pursuant to *Section 12.3 (Costs and Expenses)* or *12.4 (Indemnities)* (other than payments pursuant to *2.12 (Capital Adequacy)* or *2.13 (Taxes)*) in excess of its Ratable Portion of all payments of such Obligations obtained by all the Lenders, such Lender (a "*Purchasing Lender*") shall forthwith purchase from the other Lenders (each, a "*Selling Lender*") such participations in their Loans or other Obligations as shall be necessary to cause such Purchasing Lender to share the excess payment ratably with each of them.

If all or any portion of any payment received by a Purchasing Lender is thereafter recovered from such Purchasing Lender, such purchase from each Selling Lender shall be rescinded and such Selling Lender shall repay to the Purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Selling Lender's ratable share (according to the proportion of (i) the amount of such Selling Lender's required repayment in relation to (ii) the total amount so recovered from the Purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered.

The Borrower agrees that any Purchasing Lender so purchasing a participation from a Selling Lender pursuant to this *Section 12.7 (Sharing of Payments, Etc.)* may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

Notices, Etc.

All notices, demands, requests and other communications provided for in this Agreement shall be given in writing, or by any telecommunication device capable of creating a written record (including electronic mail), and addressed to the party to be notified as follows:

(a) if to the Borrower:

Washington Group International, Inc.
720 Park Boulevard
Boise, ID 838712
Attention: George H. Juetten and Frank S. Finlayson
Telecopy no: (208) 386-5922
E-Mail Addresses: george.juetten@wgint.com and frank.finlayson@wgint.com

with a copy to:
Richard D. Parry, Esq.
Telecopy no: (208) 386-5220
E-Mail Address: richard.parry@wgint.com

with a copy to:

Skadden, Arps, Slate, Meagher & Flom
333 West Wacker Drive
Chicago, IL 60606
Attention: David S. Kurtz, Esq.
Telecopy no: (312) 407-0411
E-Mail Address: dkurtz@skadden.com

(b) if to any Lender, at its Applicable Lending Office specified opposite its name on *Schedule II (Applicable Lending Offices and Addresses for Notices)* or on the signature page of any applicable Assignment and Acceptance;

(c) if to any Issuer, at the address set forth under its name on *Schedule II (Applicable Lending Offices and Addresses for Notices)*; and

(d) if to the Administrative Agent:

Credit Suisse First Boston
Eleven Madison Avenue
New York, NY 10010
Attention: Mr. Joel Glodowski
Telecopy no: (212) 325-8309
E-Mail Address: joel.glodowski@csfb.com

with a copy to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue,
New York, New York 10153-0119
Attention: Harvey R. Miller, Esq.
Telecopy no: (212) 310-8007
E-Mail Address: harvey.miller@weil.com

or at such other address as shall be notified in writing (i) in the case of the Borrower and the Administrative Agent, to the other parties and (ii) in the case of all other parties, to the Borrower and the Administrative Agent. All such notices and communications shall be effective upon personal delivery (if delivered by hand, including any overnight courier service), when deposited in the mails (if sent by mail), or when properly transmitted (if sent by a telecommunications device or by electronic mail); *provided, however, that notices and communications to the Administrative Agent pursuant to Article II (The*

Facility) or XI (The Administrative Agent; the Other Agents) shall not be effective until received by the Administrative Agent.

No Waiver; Remedies

No failure on the part of any Lender, Issuer or the Administrative Agent to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Binding Effect

This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and when the Administrative Agent shall have been notified by each Lender that such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent and each Lender and their respective successors and assigns; *provided, however*, that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders.

Governing Law

This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

Submission to Jurisdiction; Service of Process

Any legal action or proceeding with respect to this Agreement or any other Loan Document may be brought in the Bankruptcy Court or in the courts of the State of New York or of the United States of America for the Southern District of New York, and, by execution and delivery of this Agreement, each Loan Party hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, that any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions.

Each Loan Party that is not incorporated in the United States of America hereby irrevocably designates, appoints and empowers CT Corporation (telephone no: (212) 894-8400) (teletype no: (212) 894-8490) (the "*Process Agent*"), in the case of any suit, action or proceeding brought in the United States of America as its designee, appointee and agent to receive, accept and acknowledge for, and on its behalf and in respect of its property, service of any and all legal process, summons, notices and documents that may be served in any action or proceeding arising out of or in connection with this Agreement or any Loan Document. Such service may be made by mailing (by registered or certified mail, postage prepaid) or delivering a copy of such process to such Loan Party in care of the Process Agent at the Process Agent's above address, and such Loan Party hereby irrevocably authorizes and directs the Process Agent to accept such service on its behalf. As an alternative method of service, such Loan Party irrevocably consents to the service of any and all process in any such action or proceeding by

the mailing (by registered or certified mail, postage prepaid) of copies of such process to the Process Agent or such Loan Party at its address specified in *Section 12.8 (Notices, Etc.)*. Each Loan Party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Each Loan Party hereby irrevocably consents to the service of any and all legal process, summons, notices and documents in any suit, action or proceeding brought in the United States of America arising out of or in connection with this Agreement or any of the other Loan Documents by the mailing (by registered or certified mail, postage prepaid) or delivering of a copy of such process to such Loan Party at its address specified in *Section 12.8 (Notices, Etc.)*. Each Loan Party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by any Requirement of Law.

Nothing contained in this *Section 12.12* shall affect the right of the Administrative Agent or any Lender to serve process in any other manner permitted by law or commence legal proceedings or otherwise proceed against the Borrower or any other Loan Party in any other jurisdiction.

If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase Dollars with such other currency at the spot rate of exchange quoted by the Administrative Agent at 11:00 a.m. (New York time) on the Business Day preceding that on which final judgment is given, for the purchase of Dollars, for delivery two Business Days thereafter.

Waiver of Jury Trial

Each of the Administrative Agent, the Lenders and the Loan Parties irrevocably waives trial by jury in any action or proceeding with respect to this Agreement or any other Loan Document.

Marshaling; Payments Set Aside

None of the Administrative Agent, any Lender or any Issuer shall be under any obligation to marshal any assets in favor of the Borrower or any other party or against or in payment of any or all of the Obligations. To the extent that the Borrower makes a payment or payments to the Administrative Agent, the Lenders or the Issuers or any of such Persons receives payment from the proceeds of the Collateral or exercise their rights of setoff and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied and all Liens, right and remedies therefor shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

Section Titles

The Section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties

hereto.

Execution in Counterparts

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document.

Entire Agreement

This Agreement, together with all of the other Loan Documents and all certificates and documents delivered hereunder or thereunder, embodies the entire agreement of the parties and supersedes all prior agreements and understandings relating to the subject matter hereof. Delivery of an executed signature page of this Agreement by facsimile transmission shall be as effective as delivery of a manually executed counterpart hereof. A set of the copies of this Agreement signed by all parties shall be lodged with the Borrower and the Administrative Agent.

Confidentiality

Each Lender and the Administrative Agent agree to keep information obtained by it pursuant hereto and the other Loan Documents confidential in accordance with such Lender's or the Administrative Agent's, as the case may be, customary practices and agrees that it shall only use such information in connection with the transactions contemplated by this Agreement and not disclose any of such information other than (i) to such Lender's or the Administrative Agent's, as the case may be, employees, representatives and agents that are or are expected to be involved in the evaluation of such information in connection with the transactions contemplated by this Agreement and are advised of the confidential nature of such information, (ii) to the extent such information presently is or hereafter becomes available to such Lender or the Administrative Agent, as the case may be, on a non-confidential basis from a source other than the Borrower or any other Loan Party, (iii) to the extent disclosure is required by law, regulation or judicial order or requested or required by bank regulators or auditors or (iv) to assignees or participants or potential assignees or participants who agree to be bound by the provisions of this *Section 12.18*.

The Administrative Agent and the Lenders acknowledge that the Borrower and its Subsidiaries perform classified contracts funded by or for the benefit of the United States Federal government and, accordingly, neither the Borrower nor any Subsidiary will be obligated to release, disclose or otherwise make available to the Administrative Agent or any Lender any classified or special nuclear material to any parties not in possession of a valid security clearance and authorized by the appropriate agency of the United States Federal government to receive such material. The Administrative Agent and the Lenders agree that in connection with any exercise of a right or remedy the United States Federal government may remove classified information or government-issued property prior to any remedial action implicating such classified information or government-issued property. Upon notice from the Borrower, the Administrative Agent and the Lenders shall take such steps in accordance with this Agreement and the orders of the Bankruptcy Court as may reasonably be requested by the Borrower to enable the Borrower or any Subsidiary thereof to comply with the Federal Ownership

Washington Group International, Inc.
Credit Agreement

Control or Influence requirements of the United States Federal government imposed from time to time.

[Signature Pages Follow]

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

Washington Group International, Inc.,
as Borrower

By:

Name:

Title:

Credit Suisse First Boston,
as Administrative Agent

By:

Name:

Title:

[Name of Guarantors]
as a Guarantor

By:

Name:

Title:

Issuers

Credit Suisse First Boston,
as Issuer

By:

Name:

Title:

Lenders

Credit Suisse First Boston,
as a Lender

By:

Name:

Title:

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"*Account Debtor*" has the meaning specified in Article 9 of the UCC.

"*Additional Lender*" has the meaning specified in *subclause (iii) of clause (b) of Section 2.1 (The Commitments)*.

"*Additional Pledged Collateral*" means, subject to the limitations set forth in the last paragraph of *Section 10.1 (Security)*, all shares of, limited or general partnership interests in, limited liability company interests in and all securities convertible into, and warrants, options and other rights to purchase or otherwise acquire, stock of, either (i) any Person that, after the date of this Agreement, as a result of any occurrence, becomes a direct Subsidiary of any Grantor or (ii) any issuer of Pledged Stock, any partnership or any LLC that are acquired by any Grantor after the date hereof; all certificates or other instruments representing any of the foregoing; all Security Entitlements of any Grantor in respect of any of the foregoing; all additional indebtedness from time to time owed to any Grantor by any obligor on the Pledged Notes and the instruments evidencing such indebtedness; and all interest, cash, instruments and other property or Proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing. Additional Pledged Collateral may be General Intangibles or Investment Property.

"*Adequate Protection Stipulation*" means that certain stipulation and order issued by the Bankruptcy Court in substantially the form of *Exhibit J (Form of Adequate Protection Stipulation and Cash Collateral Order)* and otherwise in form and substance satisfactory to the Administrative Agent.

"*Administrative Agent*" has the meaning specified in the preamble hereto.

"*Affiliate*" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with, such Person, each officer, director or general partner of such Person, and each Person who is the beneficial owner of 10% or more of any class of Voting Stock of such Person. For the purposes of this definition, "*control*" means the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"*Agreement*" means this Secured Super-Priority Debtor In Possession Revolving Credit Agreement.

"*Applicable Lending Office*" means, with respect to each Lender, the office of such Lender specified as its "Lending Office" opposite its name on *Schedule II (Applicable Lending Offices and Addresses for Notices)* or on the Assignment and Acceptance by which it became a Lender or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

"*Applicable Margin*" means a rate equal to four percent (4%) per annum.

"*Applicable Unused Commitment Fee Rate*" means 0.75% per annum.

"*Approved Fund*" means, with respect to any Lender that is a fund investing in bank loans, any other fund investing in bank loans and advised or managed by the same investment advisor as

that of such Lender or by an Affiliate of such investment advisor.

"Approved Securities Intermediary" means a Securities Intermediary or commodity intermediary reasonably acceptable to the Administrative Agent and with respect to which a Grantor has delivered to the Administrative Agent an executed Control Account Letter.

"Asset Sale" has the meaning specified in *Section 7.4 (Sale of Assets)*.

"Assignable Government Contract" means an effective Government Contract (a) that the Grantor party thereto has the present right to assign to a third party (other than a Subsidiary of the Borrower) pursuant to the terms thereof, (b) that, pursuant to the terms of such Government Contract, can then be reassigned by such assignee to another third party and (c) that, together with the assignment thereof, meets all applicable requirements for assignments under the Assignment of Claims Act.

"Assignment and Acceptance" means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Administrative Agent, in substantially the form of *Exhibit A (Form of Assignment and Acceptance)*.

"Assignment of Claims Act" means the Assignment of Claims Act of 1940, 31 U.S.C. 327 and 41 U.S.C. 15, as amended.

"Assumption Agreement" has the meaning specified in *subclause (iii) of clause (b) of Section 2.1 (The Commitments)*.

"Available Credit" means, at any time, an amount equal to (a) the lesser of (i) the amount identified in the Budget as "DIP Balance" at such time and (ii) the Total Commitment in effect at such time, *minus* (b) the aggregate Outstandings at such time.

"Bankruptcy Code" means title 11, United States Code, as amended from time to time.

"Bankruptcy Court" is defined in the recitals to this Agreement; *provided, however*, that *"Bankruptcy Court"* shall also mean any other court having competent jurisdiction over the Cases.

"Base Rate" means, for any period, a fluctuating interest rate per annum as shall be in effect from time to time, which rate per annum shall be equal at all times to the greater of:

the Prime Rate; and

the sum of (i) 0.5% per annum *plus* (ii) the Federal Funds Rate.

If the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Rate for any reason, including the inability of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the *"Base Rate"* shall be determined without regard to *clause (b)* above until the circumstances giving rise to such inability no longer exist. Any change in the Base Rate due to a change in the Federal Funds Rate or the Prime Rate shall be effective on the effective date of such change in the Federal Funds Rate or the Prime Rate, respectively.

"Blocked Account" means a deposit account maintained by any Loan Party with a Blocked Account Bank, which account is the subject of an effective Blocked Account Letter and includes all monies on deposit therein and all certificates and instruments, if any, representing or evidencing such Blocked Account.

"Blocked Account Bank" means any Lender or other financial institution reasonably acceptable to the Administrative Agent and with respect to which a Grantor has delivered to the Administrative Agent an executed Blocked Account Letter.

"Blocked Account Letter" means a letter agreement, substantially in the form of *Exhibit L (Form of Blocked Account Letter)* (with such changes thereto as may be agreed to by the Administrative Agent), executed by the relevant Grantor and the Administrative Agent and acknowledged and agreed to by the relevant Blocked Account Bank.

"Borrowing" means a borrowing consisting of Loans made on the same day by the Lenders ratably according to their respective Commitments.

"Budget" means, prior to the delivery of the Final Budget, the Interim Budget and, thereafter, the Final Budget.

"Business Day" means a day of the year on which banks are not required or authorized pursuant to any Requirement of Law to close in New York, New York.

"Business Plan" means a business plan of the Borrower and its Subsidiaries to be delivered to the Administrative Agent pursuant to *clause (b) of Section 5.2 (Final Budget and Business Plan)*, which shall contain forecasted income statement, balance sheet, cash flows and, for each Project in backlog on the date of the Business Plan with remaining revenues in excess of \$50,000,000, a statement of receipts and disbursements, in each case prepared by the management of the Borrower and covering the Fiscal Years ending in 2002, 2003 and 2004.

"Capital Expenditures" means, with respect to any Person for any period, the aggregate of amounts that would be reflected as additions to property, plant or equipment on a consolidated balance sheet of such Person and its Subsidiaries prepared in conformity with GAAP, excluding interest capitalized during construction.

"Capital Lease" means, with respect to any Person, any lease of property by such Person as lessee that would be accounted for as a capital lease on a balance sheet of such Person prepared in conformity with GAAP.

"Capital Lease Obligations" means, with respect to any Person, the capitalized amount of all obligations of such Person and any of its Subsidiaries under Capital Leases, as determined on a consolidated basis in conformity with GAAP.

"Carve-Out" means claims of the following parties for the following amounts: (i) the unpaid fees of the U.S. Trustee or the Clerk of the Bankruptcy Court pursuant to 28 U.S.C. § 1930(a) and (b), (ii) unpaid fees and disbursements incurred by the professionals retained by the Borrower and the Debtor Guarantors and any Committee after the occurrence of any Event of Default, in an amount not to

exceed \$2,000,000 in the aggregate and (iii) all fees and expenses incurred by the professionals retained by the Borrower, the Debtor Guarantors or any Committee prior to the occurrence of any Default or Event of Default; *provided, however*, that “Carve-Out” shall not include any fees or expenses incurred, directly or indirectly, by any party (including the Borrower, any Guarantor or any Committee) in respect of, arising from or relating to, the initiation or prosecution of any claims or causes of action, adversary proceedings or other litigation against the Administrative Agent, the Lenders, the Prepetition Lenders or the Issuers, including for preference, fraudulent conveyance or other avoidance power claims or challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the Obligations or the security interests and Liens of the Secured Parties in respect thereof; and *provided, further*, that, as long as no Default or Event of Default shall occur and be continuing, the Borrower and each Debtor Guarantor shall be permitted to pay compensation and reimbursement of expenses allowed and payable under Sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable, and the same shall not reduce the Carve-Out.

“Cases” has the meaning specified in the recitals hereto.

“Cash Collateral Account” means any deposit account or Securities Account established by the Administrative Agent or another financial institution reasonably acceptable to the Administrative Agent (and with which arrangements reasonably satisfactory to the Administrative Agent are in place for the payment of proceeds thereof in accordance herewith) in which cash and Cash Equivalents may from time to time be on deposit or held therein as provided herein.

“Cash Management Order” means that certain order issued by the Bankruptcy Court in substantially the form of *Exhibit I (Form of Cash Management Order)* and otherwise in form and substance satisfactory to the Administrative Agent.

“Cash Equivalents” means (a) securities issued or fully guaranteed or insured by the United States government or any agency thereof, (b) certificates of deposit, eurodollar time deposits, overnight bank deposits and bankers’ acceptances of any Lender or any commercial bank organized under the laws of the United States, any state thereof, the District of Columbia, any foreign bank, or its branches or agencies (fully protected against currency fluctuations), and, if not a Lender, has combined capital and surplus of not less than \$100,000,000, (c) commercial paper of an issuer rated at least “A-1” by Standard & Poor’s Rating Services (“S&P”) or “P-1” by Moody’s Investors Services, Inc. (“Moody’s”), (d) shares of any money market fund that (i) has at least 95% of its assets invested continuously in the types of investments referred to in *clauses (a), (b) or (c)* above, (ii) has net assets of not less than \$500,000,000 and (iii) is rated at least “A-1” by S&P or “P-1” by Moody’s; *provided, however*, that the maturities of all obligations of the type specified in *clauses (a), (b) or (c)* above shall not exceed one hundred and eighty (180) days and (e) demand deposit accounts maintained in the ordinary course of business and permitted to be maintained hereunder.

“Change of Control” means any of the following: (a) any Person or group of Persons (within the meaning of the Securities Exchange Act of 1934, as amended) other than Dennis Washington (and his heirs, estate or any trust or other Person in which his heirs or estate constitute 100% in interest of the owners or beneficiaries), but only to the extent of their holdings as of the date hereof, shall have acquired beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended) of 20% or more of the issued and outstanding Voting Stock of the Borrower or (b) during any period of twelve consecutive

calendar months, individuals who at the beginning of such period constituted the board of directors of the Borrower (together with any new directors whose election by the board of directors of the Borrower, whose nomination for election by the stockholders of the Borrower was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of such period or whose elections or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office.

“*Chattel Paper*” has the meaning specified in Article 9 of the UCC.

“*Claim*” has the meaning ascribed to such term in clause (5) of Section 101 of the Bankruptcy Code.

“*Closing Date*” means the first date on which any Loan is made or any Letter of Credit is issued.

“*Closing Financial Statements*” has the meaning specified in *clause (c) of Section 3.1 (Conditions Precedent to Initial Loans and Letters of Credit)*.

“*Collateral*” has the meaning specified in *Section 10.1 (Security)*.

“*Commitment*” means, with respect to each Lender, the commitment of such Lender to make Loans and acquire interests in other Outstandings in an aggregate principal amount outstanding not to exceed the amount set forth opposite such Lender’s name on *Schedule I (Commitments)* under the caption “*Commitment*,” (a) as such Schedule may be amended by the Administrative Agent to reflect each Assignment and Acceptance executed by such Lender, (b) as such Schedule may be supplemented by the Administrative Agent and the Borrower to include, so long as the Total Commitment does not exceed \$200,000,000, any additional Lender hereunder after the date hereof (and the additional Commitment of each such Lender shall be in an amount equal to \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof) and (c) as such amount may be reduced pursuant to this Agreement and increased pursuant to *clause (b) of Section 2.1 (The Commitments)*.

“*Commitment Date*” has the meaning specified in *subclause (i) of clause (b) of Section 2.1 (The Commitments)*.

“*Commitment Increase*” has the meaning specified in *subclause (i) of clause (b) of Section 2.1 (The Commitments)*.

“*Committee*” means the official statutory committee of unsecured creditors approved in the Cases pursuant to Section 1102 of the Bankruptcy Code.

“*Concentration Account*” means the “*Concentration Account*” under and as defined in the Cash Management Order as of the date hereof (Account Number 12330-07378, at Bank of America, 1850 Gateway Boulevard, Concord, CA 94525).

“*Constituent Documents*” means, with respect to any Person, (a) the articles or certificate of incorporation (or the equivalent organizational documents) of such Person, (b) the by-laws (or the equivalent governing documents) of such Person and (c) any document setting forth the manner of

election and duties of the directors or managing members of such Person (if any) and the designation, amount or relative rights, limitations and preferences of any class or series of such Person's Stock.

"Contaminant" means any material, substance or waste that is classified, regulated or otherwise characterized under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including any petroleum or petroleum-derived substance or waste, asbestos and polychlorinated biphenyls.

"Contracts" means, with respect to any Loan Party, any and all "contracts", as such term is defined in Article 1 of the UCC, of such Loan Party.

"Contractual Obligation" of any Person means any obligation, agreement, undertaking or similar provision of any Security issued by such Person or of any agreement, undertaking, contract, lease, indenture, mortgage, deed of trust or other instrument (excluding a Loan Document) to which such Person is a party or by which it or any of its property is bound or to which any of its properties is subject.

"Control Account" means a Securities Account or commodity account maintained by any Grantor with an Approved Securities Intermediary which account is the subject of an effective Control Account Letter. *"Control Account"* includes all financial assets held therein and all certificates and instruments, if any, representing or evidencing such Control Account.

"Control Account Letter" means a letter agreement, substantially in the form of *Exhibit M (Form of Control Account Letter)* (with such changes as may be agreed to by the Administrative Agent), executed by any Grantor and the Administrative Agent and acknowledged and agreed to by the relevant Approved Securities Intermediary.

"Copyrights" means (a) all copyrights arising under the laws of the United States, any other country or any political subdivision thereof (whether registered or unregistered and whether published or unpublished), all registrations and recordings thereof and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office or in any foreign counterparts thereof and (b) the right to obtain all renewals thereof.

"Copyright Licenses" means any written agreement naming any Grantor as licensor or licensee granting any right under any Copyright, including the grant of rights to copy, publicly perform, create derivative works, manufacture, distribute, exploit and sell materials derived from any Copyright.

"Customary Permitted Liens" means, with respect to any Person, any of the following Liens:

Liens with respect to the payment of taxes, assessments or governmental charges, in each case that are not yet due or that are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP;

Liens of landlords arising by statute, inchoate statutory or construction liens and liens of suppliers, mechanics, carriers, materialmen, warehousemen, producers, operators or workmen and other liens imposed by law created in the ordinary course of business for amounts not yet

due or that are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP;

liens, pledges or deposits made in the ordinary course of business in connection with worker's compensation, unemployment insurance or other types of social security benefits or taxes, assessments, statutory obligations or other similar charges or to secure the performance of bids, tenders, sales, leases, contracts (other than for the repayment of borrowed money) or other deposits to be made in the ordinary course of business and not in connection with the borrowing of money, or surety, appeal, customs or performance bonds;

encumbrances arising by reason of zoning restrictions, easements, licenses, reservations, covenants, rights-of-way, utility easements, building restrictions or other similar encumbrances on the use of Real Property that do not materially detract from the value of such Real Property or interfere with the ordinary conduct of the business conducted and proposed to be conducted at such Real Property;

encumbrances arising under leases or subleases of Real Property that do not, in the aggregate, materially detract from the value of such Real Property or interfere with the ordinary conduct of the business conducted and proposed to be conducted at such Real Property; and

financing statements of a lessor's rights in and to personal property leased to such Person in the ordinary course of such Person's business.

"Debt Issuance" means the incurrence of Indebtedness of the type specified in *clause (a)* and *(b)* of the definition of *"Indebtedness"* by the Borrower or any of its Subsidiaries.

"Debtor Guarantor" means any Guarantor other than Raytheon Infrastructure, Inc.

"Default" means any event that, with the passing of time or the giving of notice or both, would become an Event of Default.

"Disclosure Documents" means, collectively, the last report on Form 10-K filed by the Borrower and any other document filed by any Loan Party with the Securities and Exchange Commission thereafter, as amended from time to time.

"Division" means each division of each Group identified as such prior to the date hereof in the Closing Financial Statements and including the following: (a) within the "Infrastructure and Mining" Group, "Heavy Civil Construction", "Mining", "Infrastructure Programs" and "International", (b) within the "Power" Group, "EPC Power", "Fossil Services", "Nuclear Power" and "Maintenance Services", (c) within the "Industrial Process" Group, "Birmingham", "Industrial/Manufacturing", "Process", "Philadelphia", "Facility Management and Logistics", "Quality Programs" and "Rust Constructors" and (d) within the "Government" Group, "DOE Management", "Commercial OPS", "Federal Projects", "Chem-Demil", "EELV" and "International Alliances".

"Document" has the meaning specified in Article 9 of the UCC.

"Dollars" and the sign "\$" each mean the lawful money of the United States of America.

"Eligible Assignee" means (a) a Lender or any Affiliate or Approved Fund of such Lender, (b) a commercial bank having total assets in excess of \$5,000,000,000, (c) a finance company, insurance company or any other financial institution or fund, in each case regularly engaged in making, purchasing or investing in loans and having a net worth, determined in accordance with GAAP, in excess of \$250,000,000 or, to the extent net worth is less than such amount, a finance company, insurance company, other financial institution or fund, reasonably acceptable to the Administrative Agent or (d) a savings and loan association or savings bank organized under the laws of the United States or any State thereof having a net worth, determined in accordance with GAAP, in excess of \$250,000,000; *provided, however*, that *"Eligible Assignee"* shall not include Dennis Washington, any Loan Party any Affiliate thereof or any other Person acting on behalf of the foregoing or Raytheon or any Affiliate thereof.

"Eligible Line of Business" means the general nature of the business and activities engaged in by the Borrower and its Subsidiaries on the Closing Date and activities reasonably related thereto.

"Entry Date" means the date of the entry of the Final Order.

"Environmental Laws" means all applicable Requirements of Law now or hereafter in effect, as amended or supplemented from time to time, relating to pollution or the regulation and protection of human health, safety, the environment or natural resources, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 *et seq.*), the Hazardous Material Transportation Act, as amended (49 U.S.C. § 1801 *et seq.*), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 *et seq.*), the Toxic Substance Control Act, as amended (42 U.S.C. § 7401 *et seq.*), the Clean Air Act, as amended (42 U.S.C. § 740 *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*), the Occupational Safety and Health Act, as amended (29 U.S.C. § 651 *et seq.*), the Safe Drinking Water Act, as amended (42 U.S.C. § 300f *et seq.*), and, in each case, their state and local counterparts or equivalents and any transfer of ownership notification or approval statute, including the Industrial Site Recovery Act (N.J. Stat. Ann. § 13:1K-6 *et seq.*).

"Environmental Liabilities and Costs" means, with respect to any Person, all liabilities, obligations, responsibilities, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any other Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, including any thereof arising under any Environmental Law, Permit, order or agreement with any Governmental Authority or other Person, in each case relating to any environmental, health or safety condition or to any Release or threatened Release and resulting from the past, present or future operations of, or ownership of property by, such Person or any of its Subsidiaries.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

"Equipment" has the meaning specified in Article 9 of the UCC.

"ERISA" means the Employee Retirement Income Security Act of 1974 (or any successor legislation thereto), as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) under common control, or treated as a single employer, with the Borrower or any of its Subsidiaries within the meaning of clauses (b), (c), (m) or (o) of Section 414 of the Internal Revenue Code.

"ERISA Event" means, other than the commencement of the Cases, (a) a reportable event described in clause (b) of Section 4043 or subclauses (1), (2), (3), (5), (6) or (8) of clause (c) of Section 4043 of ERISA with respect to a Title IV Plan or a Multiemployer Plan, (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in subclause (2) of clause (a) of Section 4001 of ERISA, (c) the complete or partial withdrawal of any Loan Party or any ERISA Affiliate from any Multiemployer Plan, (d) notice of reorganization or insolvency of a Multiemployer Plan, (e) the filing of a notice of intent to terminate a Title IV Plan or the treatment of a plan amendment as a termination under Section 4041 of ERISA, (f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC, (g) the failure to make any required contribution to a Title IV Plan or Multiemployer Plan or (h) the imposition of a lien under Section 412 of the Internal Revenue Code or Section 302 of ERISA on any Loan Party or any ERISA Affiliate.

"Event of Default" has the meaning specified in *Section 8.1 (Events of Default)*.

"Excluded Projects" means, collectively, any New Excluded Project and any other Project that has suffered a material deterioration in operating performance or cash flows, as determined by the Administrative Agent or the Requisite Lenders, in each case in their sole discretion after consultation with the Borrower.

"Facility" means the Commitments and the provisions herein related to the Loans and Letters of Credit.

"Fair Market Value" means (a) with respect to any asset or group of assets (other than a marketable Security) at any date, the value of the consideration obtainable in a sale of such asset at such date assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset (in respect of transactions in excess of \$10,000,000, as reasonably determined by the Board of Directors of the Borrower, or its Subsidiaries, as applicable) or, if such asset shall have been the subject of a relatively contemporaneous appraisal by an independent third party appraiser, the basic assumptions underlying which have not materially changed since its date, the value set forth in such appraisal and (b) with respect to any marketable Security at any date, the closing sale price of such Security on the Business Day next preceding such date, as appearing in any published list of any national securities exchange or the Nasdaq Stock Market or, if there is no such closing sale price of such Security, the final price for the purchase of such Security at face value quoted on such business day by a financial institution of recognized standing regularly dealing in securities of such type and selected by the Administrative Agent.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds

transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System, or any successor thereto.

"Fee Letters" means, collectively, (a) the letter, dated as of May 14, 2001, addressed to the Borrower from CSFB and accepted by the Borrower on May 14, 2001, with respect to certain fees to be paid from time to time to CSFB and (b) the letter dated as of May 14, 2001, addressed to the Borrower from CSFB and accepted by the Borrower on May 14, 2001, with respect to certain fees to be paid from time to time to CSFB for the benefit of the Lenders and Issuers.

"Final Budget" means the Final DIP Budget provided by the Borrower and approved by the Administrative Agent and each Lender, for the funding of Projects and related overhead costs and consisting of monthly projections for the period commencing on the Closing Date and ending on the Scheduled Termination Date, consisting of a balance sheet, income statement and cash flows reflecting segregated receipts and disbursements and net cash flow from operations for each Group and income statements and cash flows reflecting segregated receipts and disbursements for each Division, and, for specified non-operational receipts and disbursements including directly related corporate expenses and line items reflecting Letters of Credit requirements, funding of Affiliates of the Borrower other than the Borrower and the Guarantors (including Permitted Joint Ventures) and identifying New Projects by Group and Division.

"Final Order" means an order of the Bankruptcy Court pursuant to Section 364 of the Bankruptcy Code, in form and substance satisfactory to the Administrative Agent and the Requisite Lenders, approving this Agreement and the other Loan Documents, authorizing the incurrence by the Loan Parties of permanent post-petition secured and super-priority Indebtedness in accordance with this Agreement, as to which no stay has been entered that has not been reversed, modified, vacated or overturned.

"Financial Statements" means the financial statements of the Borrower and its Subsidiaries delivered in accordance with Sections 4.4 (*Financial Statements*) and 5.1 (*Financial Statements*).

"First Day Orders" means the Cash Management Order, the Adequate Protection Stipulation and all other orders entered by the Bankruptcy Court on the Petition Date or within five Business Days of the Petition Date or based on motions filed on the Petition Date.

"Fiscal Quarter" means each of the three-month periods ending on or about March 2, June 1, August 31 and November 30.

"Fiscal Year" means the twelve-month period ending on or about November 30.

"Foreign Ownership Control or Influence" has the meaning given to such phrase in the

Federal National Industrial Security Program Operating Manual and any successor documentation or program thereto.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entity as may be in general use by significant segments of the accounting profession, that are applicable to the circumstances as of the date of determination.

“GAAP Memorandum” means the memorandum delivered to the Lenders pursuant to Section 3.1 (*Conditions Precedent to Initial Loans and Letters of Credit*).

“General Intangible” has the meaning specified in Article 9 of the UCC.

“Governmental Authority” means any nation, sovereign or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any central bank.

“Government Contract” means all written Contractual Obligations between any Loan Party and any Federal Governmental Authority of the United States of America.

“Grantor” means the Borrower, each Guarantor and each other Person that becomes a Grantor hereunder as may be agreed to by the Administrative Agent and the Borrower.

“Group” means the combined business units of the Borrower and its Subsidiaries identified in the Closing Financial Statements as “Industrial Processes”, “Infrastructure and Mining”, “Government”, “Power” and “Petrochemical”.

“Guarantor” means each Subsidiary of the Borrower listed on the signature pages hereof as guarantor, each Subsidiary on *Schedule V (Guarantors)* and each other Person that becomes a guarantor hereunder by delivery of a Guaranty Supplement substantially in the form of *Exhibit O (Form of Guaranty Supplement)* or in such other manner as may be permitted hereunder by the Administrative Agent.

“Guaranty” means the guaranty of the Obligations of the Borrower made by the Guarantors pursuant to *Article IX (Guaranty)*.

“Guaranty Obligation” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of such Person with respect to any Indebtedness of another Person, if the purpose or intent of such Person in incurring the Guaranty Obligation is to provide assurance to the obligee of such Indebtedness that such Indebtedness will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof, including (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of Indebtedness of another Person and (b) any liability of such Person for Indebtedness of another Person through any agreement (contingent or otherwise) (i) to

purchase, repurchase or otherwise acquire such Indebtedness or any security therefor, or to provide funds for the payment or discharge of such Indebtedness (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (ii) to maintain the solvency or any balance sheet item, level of income or financial condition of another Person, (iii) to make take-or-pay or similar payments, if required, regardless of non-performance by any other party or parties to an agreement, (iv) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss or (v) to supply funds to, or in any other manner invest in, such other Person (including to pay for property or services irrespective of whether such property is received or such services are rendered), if in the case of any agreement described under *clause (b)* of this sentence the primary purpose or intent thereof is as described in the preceding sentence. The amount of any Guaranty Obligation shall be equal to the amount of the Indebtedness so guaranteed or otherwise supported.

“*HATCH*” means HATCH Associates Consultants, Inc.

“*Hedging Contracts*” means all Interest Rate Contracts, foreign exchange contracts, currency swap or option agreements, forward contracts, commodity swap, purchase or option agreements, other commodity price hedging arrangements and all similar agreements or arrangements designed to alter the risks of any Person arising from fluctuations in interest rates, currency values or commodity prices.

“*Increase Date*” has the meaning specified in *subclause (iii)* of *clause (b)* of *Section 2.1 (The Commitments)*.

“*Increasing Lender*” has the meaning specified in *subclause (i)* of *clause (b)* of *Section 2.1 (The Commitments)*.

“*Indebtedness*” of any Person means without duplication (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by notes, bonds, debentures or similar instruments or that bear interest, (c) all reimbursement and all obligations with respect to letters of credit, bankers’ acceptances, surety bonds and performance bonds, whether or not matured, (d) all indebtedness for the deferred purchase price of property or services, other than trade payables incurred in the ordinary course of business that are not overdue, (e) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (f) all Capital Lease Obligations of such Person and the present value of future rental payments under all synthetic leases, (g) all Guaranty Obligations of such Person, (h) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any Stock or Stock Equivalents of such Person, valued, in the case of redeemable preferred stock, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (i) all payments that such Person would have to make in the event of an early termination on the date Indebtedness of such Person is being determined in respect of Hedging Contracts of such Person and (j) all Indebtedness of the type referred to above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including Accounts and General Intangibles) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.